SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 128

JOHN T. GOJACK, PETITIONER,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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[fol. a] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

(Grand Jury Impaneled on December 1, 1955, and Sworn in on December 6, 1955)

Criminal No. 1215-55

Grand Jury Original (2 U.S.C. 192)

UNITED STATES OF AMERICA

v.

JOHN T. GOJACK

The Grand Jury charges:

INTRODUCTION—Filed December 21, 1955

On February 28, 1955, and on March 1, 1955, in the District of Columbia, a subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings, pursuant to the Legislative Reorganization Act of 1946, Section 121(q), (60 Stat. 828), and to H. Res. 5, 84th Congress.

Defendant, John T. Gojack, appeared as a witness before those subcommittees, at the place and on the dates above stated, and was asked questions which were pertinent to the question then under inquiry. Then and there the defendant unlawfully refused to answer those pertinent questions.

The allegations of this introduction are adopted and incorporated into the counts of this indictment which follow, each of which counts will in addition designate the particular date and describe the question which was asked of the defendant and which he refused to answer.

Count One

On February 28, 1955. Question:

Were you ever a member of the Communist Party?

Count Two

On February 28, 1955. Question:

Were you then a member of the Communist Party in 1948, at any time during the year 1948?

Count Three

On February 28, 1955. Question:

Are you now a member of the Communist Party?

[fol. b]

Count Four

On March 1, 1955. Question:

You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson.

Count Five

On March 1, 1955. Question:

Are you acquainted with Henry Aron, A-r-o-n?

Count Six

On March 1, 1955. Question:

Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron ever appear and address a group of people when you were present?

Count Seven

On March 1, 1955. Question:

May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party?

Count Eight

On March 1, 1955. Question:

Did you take active part in the peace pilgrimage to Washington which was organized by one of the "front" organizations known as the American Peace Crusade?

Count Nine

On March 1, 1955. Question:

What method was used to get you as an original sponsor?

[That is, original sponsor of the American Peace Crusade.]

Leo A. Rover. United States Attorney in and for the District of Columbia.

A True Bill, W. S. Dunnington, Foreman.

[fol. c] [File endorsement omitted]

IN UNITED STATES COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 1215-55

Charge 2 USC 192

[Title omitted]

PLEA OF DEFENDANT—Filed January 6, 1956

On this 6th day of January, 1956, the defendant John T. Gojack, appearing in proper person and by his attorney David Rein, Esquire, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is granted 30 days to file motions. Bond is set by the Court in the amount of $1,000.00 and the defendant is permitted to remain in custody of counsel pending posting bond.

By direction of Burnita Shelton Matthews, Presiding Judge. Criminal Court One.

Harry M. Hull, Clerk, By John N. Hess, Deputy Clerk.

Present: United States Attorney, By Thomas Flannery, Assistant United States Attorney.

E. Markwalter, Official Reporter.

[fol. d] [File endorsement omitted]

IN UNITED STATES COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 1215-55

[Title omitted]

MOTION TO DISMISS INDICTMENT AND FOR OTHER APPROPRIATE RELIEF—Filed February 14, 1956

The above named defendant moves, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, that the indictment be dismissed or that appropriate relief be granted, upon the following grounds:

1. Section 121 (q) of the Legislative Reorganization Act and H. Res. 5, 84th Congress, on their face and as applied by the questions herein, exceed the constitutional limits of congressional power. They are unconstitutional and confer no legal authority upon the Committee on Un-American Activities. They violate the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States.

2. Section 121 (q) and Section 192 of Title 2 of the United States Code are unconstitutional on their face and as applied herein in that they are vague and indefinite and fail to provide an ascertainable standard for conduct, all in violation of the First, Fifth and Sixth Amendments to the Constitution of the United States.

3. The indictment does not state facts sufficient to constitute an offense against the United States for the following reasons, among others:

(a) The indictment fails to allege the state of mind requisite for guilt under Section 192 of Title 2 of the United States Code.

(b) The indictment fails to allege a clear and present danger of the substantive evils at which Section 121 (q) of the Legislative Reorganization Act and H. Res. 5, 84th Congress and Section 192 of Title 2, United States Code are aimed.

(c) The indictment fails to allege the authority of the alleged subcommittee of the Committee on Un-American Activities.

[fol. e] 4. The indictment is void and illegal in that there were less than 12 members of the grand jury which voted

the indicted who were impartial and free from prejudice and bias against the defendant and, therefore, as to this defendant, the alleged grand jury was illegally constituted. Annexed hereto in support of this motion is an affidavit of David Scribner dated February 13, 1956. In the alternative, the defendant moves for a hearing at which he can offer proof that prejudice or bias existed on the part of more than 11 members of the grand jury. Defendant submits the affidavit of David Scribner annexed hereto as his offer of proof for such hearing.

5. The offenses with which the defendant is charged are in fact a single offense. The indictment is invalid, therefore, in that it charges the defendant with many offenses whereas, if guilty, he has committeed only one offense.

And, in the alternative, the defendant moves the Court for an order directing the United States Attorney for the District of Columbia to serve and file a Bill of Particulars setting forth in detail the answers to the following:

1. By what authority and in what manner was the subcommittee referred to in the indictment appointed or designated?

2. What was the scope of the subcommittee's authority?

3. With regard to each question set forth in the indictment, what was the inquiry then before the Committee?

4. In what manner was each question set forth in the indictment pertinent to the questions then under inquiry?

David Rein, Esq., 711 14th Street, N.W., Washington, D. C. Scribner & Pollitt, 11 East 51st Street, New York, N.Y. Donner, Kinoy & Perlin, 342 Madison Avenue, New York, N.Y., Attorneys for the Defendant.

[fol. f] AFFIDAVIT OF DAVID SCRIBNER AND OFFER OF PROOF—Filed February 14, 1956

STATE OF NEW YORK.
County of New York, ss:

David Scribner, being duly sworn, deposes and says:

1. I am one of the attorneys for the defendant herein.

2. This affidavit is made in support of the motion to dismiss the indictment on the ground that it is void and illegal in that the Grand Jury which voted the indictment was

illegally constituted as to this defendant and as an offer of proof for the hearing requested in defendant's motion to dismiss the indictment.

3. On information and belief, 11 members of the Grand Jury which voted this indictment were employed by the Government of the United States and are biased and prejudiced against the defendant and unable to exercise an independent judgment.

4. Considering the number of Government employees in this jurisdiction, wives and members of the immediate families of additional Grand Jurors, may have been employed by the United States or District of Columbia Government or seeking such employment. Information with respect to any such associations can be obtained as a practical matter only from the examination of the Grand Jurors at a hearing or from examination of records not presently available to the affiant.

5. I have been informed that the Grand Jury records of this Court show that two members of the Grand Jury other than the eleven Government employees are listed as unemployed. Considering the number of Government employees in this jurisdiction these Grand Jurors and close associates, including relatives of the additional Grand Jurors, may have been seeking employment by the United States or District of Columbia Government. Information with regard to this fact can be obtained as a practical matter only from [fol. g] an examination of the Grand Jurors at a hearing or from examination of records not presently available to the affiant.

6. The indictment on its face discloses that the Grand Jury was informed that the alleged contempt occurred before the House Committee on Un-American Activities. This Committee is committed by Congress to investigate "the diffusion within the United States of subversive and un-American propaganda that attacks the principle of the form of government as guaranteed by our Constitution." The questions set forth in the indictment reveal on their face that they were concerned with the general subject matter of Communism, and the official public transcript of defendant's testimony before the subcommittee established that the subcommittee considered him to be or to have been connected with Communists. All of the above information

was available to the Grand Jury and it is reasonable to believe, and I do believe, that the Grand Jury was informed of it.

7. For many years past, Government employees, their relatives, and members of their immediate family, have been subjected to loyalty oaths, tests and investigations on the part of the Legislative and Executive branches of Government for any possible association or connection with Communism, no matter how remote, or beliefs of an allegedly and undefinedly "Communist" nature, including membership or association with any of the hundreds of organizations designated by the Attorney General as "subversive" under Executive Order 10450. This process was intensified by President Truman's Executive Order No. 9835 of March 21, 1947 and extended under President Eisenhower's Executive Order No. 10450 of April 27, 1953. The "loyalty" and "security" investigations of the past decade have been so sweeping in their scope, so arbitrary and capricious in their application and so severe in their penalties as to create a miasma of fear which has overwhelmed Government employees (especially in Washington, D.C.) and which renders them incapable—individually and as a class—of fulfilling their function of Grand Jurors, part of the judicial branch of Government, to consider the facts presented to them with disinterested, free and open minds absent of bias and prejudice as required by law.[1]

[fol. h] (a) Executive Order No. 10450 applies to all Government employees and applicants for Government employment. Responsible Government officials, including the Vice President of the United States and members of the United

[1] That fear generated by the loyalty and security program has been increased and accelerated by the enactment into law of such laws as the Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. 781, the McCarran-Walter Immigration Act, 66 Stat. 181, 8 U.S.C. 1181, the Communist Control Act of 1954, Public Law 637, 83d Cong., 2d Sess., 23 U.S. Law Week 47, the Compulsory Testimony Act Public Law 600, 83d Cong., 2nd Sess., 23 U.S. Law Week 59, the Bail Jumping Act, Public Law 603, 83d Cong., 2d Sess., 23 U.S. Law Week 60, and the Harboring of Criminal Act, Public Law 602, 83d Cong., 2d Sess., 23 U.S. Law Week 60.

States Civil Service Commission, have publicly stated that thousands of Government employees have lost their jobs under this program. These statements have been given extensive publicity in the District of Columbia.

(b) Government employees have been investigated, suspended or dismissed by reason of associations or actions which occurred in the distant past, or which were of short duration, or were infrequent or purely casual. Many persons have been investigated or suspended or dismissed by reason of actions or associations, not of their own, but of close associates, including relatives. Many persons have been investigated, suspended or dismissed by reason of actions or associations which bore little real relation to security.

(c) The Order provides that the employment of any civilian employee must be "clearly consistent with the interests of national security." This indefinable language is rendered even more vague by the terms of the Order, which states that investigations under the Order are to relate to "any behavior . . . which tend to show that the individual is not reliable or trustworthy." On information and belief this means in practice that a government employee must persuade the hearing board and reviewing authorities that he shares prevailing anti-communist sentiments. It is not enough to disprove communist sympathies. The presence of any "derogatory" information, i.e. information bearing "directly or indirectly" on the ultimate question, "Is the employment consistent with national security?" in the files of the FBI, Civil Service Commission, Military Intelligence Agencies, or House Committee on Un-American Activities is sufficient to provoke a full-dress FBI investigation of an employee and to subject him to the "hearing" procedures under the Order and possible loss of his employment.[2]

(d) On information and belief, during formal hearings under Executive Order 10450, persons under investigation have been asked their opinions of cases, such as the Alger Hiss, Remington, Coplon and Rosenberg cases, involving alleged Communist associations. If the mere opinions of [fol. i] persons who have not even participated in a case

[2] cf Brown: *The Operation of Personnel Security Programs*, 300 Annals of the American Academy of Political and Social Sciences, 94.

thought to affect the security of the government are treated by the authorities as relevant to a decision on security or loyalty status, the Grand Jurors would recognize that a vote against an indictment in this case would be harmful to their security status.[3]

(e) On information and belief, during formal hearings under Executive Order 10450, persons under investigation have been asked their opinions of Congressional investigation committees including the House Committee on Un-American Activities. The Grand Jurors would recognize that a vote against indictment of a person who had been cited by the said Committee as contemptuous would be harmful to their security status.[4]

(f) On information and belief, once a Government employee becomes subject to the investigative process of the Order, he has entered into a procedure where the rule of the game is that all the presumptions are against him. He will not be fully informed of the charges against him; he is not likely to be given an opportunity to confront and cross-examine witnesses against him and the techniques employed by the investigative process are those of prosecutions.[5]

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[3] cf Affidavit of Joseph Rauh, Esq., filed with this Court, *United States* v. *Watkins*, Criminal No. 1153-54.

[4] cf Affidavit of Joseph Rauh, Esq., filed with this Court, *United States* v. *Watkins*, Criminal No. 1153-54.

[5] cf Bontecou: *Due Process in Security Dismissals*, 300 Annals 102.

> "There is absolutely no way of knowing in how many cases the supposed informants are equally unreliable or have had their information wrongly reported. My examination of a number of transcripts of loyalty and security cases suggests that it is an appreciable number—say 8 per cent." (p. 107.)

> "The employee and perhaps his witnesses are subjected to rigorous cross-examination—sometimes of the bullying variety that is intended to confuse a jury as well as to break down the witness. He has no countervailing privilege, and we discover that when cross-examination is one-sided it tends to defeat its own purpose. The truth is obscured rather than made plain.

[fol. j] (g) The effect of the Federal loyalty program has been to establish a climate of conformism among Government employees. This result is inherent in the program and procedure under it. The punishment inherent in a security investigation is meted out long before it has been established whether a punishable act has been committed. Salaries are suspended. Reputations are attacked. Job opportunities outside the civil service are undercut by the publicity of security investigations. A fine (in terms of having to hire a lawyer) is imposed. Everything that the clearance procedures intend to do for suspected individuals is undone already in the process of investigation. Since government employees not themselves involved in special investigations watched what was going on around them, they became convinced that establishing one's innocence was of no avail. Avoiding the process of investigation, even if it meant final clearance, became the important thing.*

(h) Once an individual becomes involved in the investigative process under Executive Order 10450, a clearance by his agency or by the Civil Service Commission does not end his travails. At any moment the whole case may be re-

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"Many boards adopt the practice of questioning an employee on matters as to which they have full information in their files. This soon becomes evident and the employee feels that they are trying to trap him into making false statements. If he becomes wary, and tries to qualify his answers—which often relate to matters that occurred many years ago—he may be accused of evasion and ordered to say 'Yes' or 'No.' He may then act like an undergraduate taking a true-false examination and guess—perhaps guess wrong. The result is an angry, frightened, or confused employee from whom the boards will not get the full story that they need in order to judge him. Those who use the techniques described seem to lack the instinct for procedure, and, as Judge Bok points out, their concern for human rights is a waste of effort." (p. 108.)

* cf Jahoda: *Morale in the Federal Civil Service*, 300 Annals 110.

opened and he may be subjected again to the whole investigative procedure.

8. Security investigations have been repeatedly been provoked by and followed Congressional attacks upon individual Government employees (including attacks originating in the House Committee on Un-American Activities) a fact well-known to all Government employees in the District of Columbia. Members of Congress (including the Senate) have shown no inclination to refrain from personal attacks, investigations, and threats of investigations, because the object of these attacks was a part of the judicial branch of the Government. Only recently, members of the Senate have called for an investigation of two members of the Court of Appeals of the District of Columbia because of their opinion in the case of *Watkins* v. *United States*, ——— App, D.C.———, ——— F2d ———. This call for investigation is only the latest of such threats and criticism. Such criticism has been visited upon, among others, the judge who presided and the jurors who voted to acquit in the first Hiss trial. Supreme Court Justice William Douglas was threatened with impeachment because of his issuance of a stay in the celebrated Rosenberg case. Appellate judges were criticized on the floor of the Senate and threatened with investigation because of their granting of [fol. k] bail to Harry Bridges. Judge Metzger of Hawaii was criticized as a judge because he fixed bail for a group of defendants at a sum lower than that recommended by the Department of Justice.

9. Congressional Committees bent upon investigation of alleged "communism" or tolerance of communism have investigated proceedings of United States grand juries. Specifically in December of 1952 and January of 1953, a subcommittee of the House Committee on the Judiciary headed by Rep. Chelf, later by Rep. Keating, inquired into proceedings of a Federal Grand Jury in the Southern District of New York which had conducted an investigation into allegedly subversive employees of the United Nations.[7]

[7] Hearings before the Special Subcommittee to Investigate the Department of Justice, Committee on the Judiciary, House of Representatives, 82d Cong., 2d Sess. on H.

In the course of these congressional investigations, grand jurors and others testified concerning the appearance of witnesses before the Grand Jury, the deliberations of the Grand Jury and the internal decisions of the Department of Justice concerning the action to be requested from said Grand Jury. These hearings were given extensive publicity in Washington, D. C. and were generally known to Government employees.

10. The facts set forth in Paragraphs 7-9 above have been given extensive publicity and discussion in and about the District of Columbia and were and are well known to all Government employees. The total effect of the past decade of "loyalty" and "security" probes, investigations, hearings and discharges, which have been given extensive publicity in the press, has been to instill in Government employees and their families a climate of opinion that they would jeopardize their employment or subject themselves to almost unendurable harassment should they perform any act which might be viewed by any person—no matter how misinformed—as not sufficiently anti-communist. Moreover, the Grand Jury in a case such as this one would know that it had been initiated by the House Committee on Un-American Activities, one of the principal sources of the "derogatory" information which triggers proceedings under Executive Order 10450. The Grand Jury here, composed [fols. 1-13-15] in large part of Government employees was thus incapable of considering the facts before it freely, fairly, and independently of the Legislative and Executive branches of Government. It was disabled from exercising the function of a Grand Jury to stand between the prosecutor and the accused.

/s/ David Scribner.

Sworn to Before me this 13th day of February, 1956. David Ratner, Notary Public, State of New York, No. 41-3211050, Qualified in Queens County.

My Commission Expires March 30, 1957.

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* Res. 50; Hearings before the Special Subcommittee to Investigate the Department of Justice, Committee on the Judiciary, House of Representatives, 83d Cong., 1st Sess. on H. Res. 95.

[fol. m] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OF COLUMBIA

Criminal No. 1215-55

[Title omitted]

BILL OF PARTICULARS—Filed April 19, 1956

The following information is submitted, by the Government in response to defendant's Motion for Bill of Particulars granted by the Court as to part 4 thereof with respect to Counts 5, 6, 8 and 9:

Count 5: Acquaintanceship with Henry Aron was pertinent to the questions then under inquiry by the Committee because the Committee had information that Aron had been engaged in Communist Party activities.

Count 6: The Committee having information that Elmer Johnson and Aron had been engaged in Communist Party activities, it was pertinent to the question then under inquiry by the Committee whether they had ever appeared and addressed a group of people when defendant was present.

Counts 8 and 9: Defendant's connection with the activities of the American Peace Crusade was pertinent to the questions then under inquiry by the Committee because the Committee had information that the American Peace Crusade was a Communist "front" organization.

/s/ Oliver Gasch, United States Attorney. /s/ William Hitz, Assistant United States Attorney.

[fol. n] Certificate of Service (Omitted in printing)

[fol. o] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 1215-55

ORDER DENYING MOTION TO DISMISS INDICTMENT, ETC.—April 23, 1956

Upon consideration of the Motion to Dismiss Indictment And For Other Appropriate Relief, filed by defendant, and after hearing arguments thereon by counsel for defendant, and by counsel for the Government in opposition, it is by the Court this 23d day of April, 1956,

ORDERED that defendant's motion to dismiss indictment and motion for hearing on qualifications of Grand Jurors, be denied.

It is FURTHER ORDERED that the portion of defendant's Motion requesting a Bill of Particulars be denied, except as to Part 4 thereof which is granted as to Counts 5, 6, 8 and 9.

David A. Pine, Judge.

Submitted by: William Hitz, Assistant United States Attorney.

Approved as to form: David Rein, Counsel for Defendant.

[fols. 1-46] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 1215-55

UNITED STATES OF AMERICA

v.

JOHN T. GOJACK, Defendant

Washington, D. C., April 30, 1956.

Transcript of Proceedings

The above-entitled matter came on for trial before Judge David A. Pine at 11 o'clock a.m.

APPEARANCES:

On behalf of the Government: William A. Hitz, Assistant United States Attorney.

On behalf of the defendant: Frank Donner, Esq., Basil Pollitt, Esq. and David Rein, Esq.

[fol. 47] Colloquy between court and counsel

re Government Exhibit No. 7

Mr. Hitz: The next is Government Exhibit for identification Number 7, a copy of the Annual Report for the Year 1954 of this committee.

Mr. Donner: Your Honor, I object to this. I don't know why this is relevant.

The Court: What is its relevancy?

Mr. Hitz: The relevancy is that it is proof of the fact that there was a legislative purpose in the committee going into this particular field of investigation. It will show acts that the committee recommended, things that it did, things that it reported in the previous year, 1954, pursuant to which we say they acted, largely acted in 1955, in this investigation into unions and the calling of Mr. Gojack, into the operation of the amended Internal Security Act of 1950, by the 1954 Amendment.

The Court: Will you read extracts from it?

Mr. Hitz: We will read extracts from it. We think the entire document to be admissible on the question of pertinency and legislative purpose.

The Court: Will you read now extracts from it which show this purpose which you have now pinpointed?

Mr. Hitz: Yes, Your Honor.

[fol. 48] The Court: Let me have the other that has been marked.

Mr. Hitz: Yes, Your Honor. (Handing document up to Court)

I would like first to refer the Court to the paragraph in the middle of page 2, and I think then the Court will see that pages 1 and 2 are generally relevant to our inquiry here.

Mr. Donner: Where was that page?

Mr. Hitz: Page 2, in the middle, beginning "Early in 1954."

Mr. Donner: Your Honor, this simply shows that the Congress—I am sorry, Your Honor.

The Court: Go right ahead.

Mr. Donner: This simply shows that Congress in 1954 passed certain legislation. It doesn't relate it to any continuing legislative purpose in 1955. The whole point about the Communist-infiltrated unions is that it culminated in legislation. But that doesn't show any—How is that relevant to whether it was a legislative purpose to a hearing conducted in the next year?—by a different committee, too, Your Honor.

Mr. Hitz: In 1950, there was passed by Congress, as is indicated on line 3, page 2, the Internal Security Act of 1950, there were many hearings conducted prior to the passage of that Act, and afterwards, too, by this committee [fol. 49] and by other committees having to do with that subject, the internal security of the United States. As a result of those hearings taken by this particular committee, there was passed the Communist Control Act of 1954, to amend the Internal Security Act of 1950.

What that did particularly was to deny to Communist-controlled unions certain benefits of the labor acts. That, of course, is clearly a legislative act that was performed by this committee, and whether or not the Communist Control Act of 1954 and its parent Act, the Internal Security

Act of 1950, were adequate to accomplish the purposes that they had, was something for the Un-American Activities Commitee to concern itself with in the year 1955 and every subsequent year.

So we say that is a demonstrated basis and groundwork for further inquiries into infiltration of labor unions.

Mr. Donner: Your Honor, I——

Mr. Hitz: This is cumulative evidence of the fact of legislative purpose behind the inquiries of this committee.

Mr. Donner: Your Honor, may I renew my objection to simply point out the Communist infiltration Act was passed, dealing with labor unions and amending the Internal Security Act of 1950, was passed in August of 1954. This hearing was conducted in February of 1955. Unless we are to assume that some past piece of legislative clothes with continuing legislative purpose everything that the [fol. 50] committee does after that, it seems to me that we can't find any relevancy to legislative purpose in this particular paragraph of the annual report. For that reason, I would object to it.

Mr. Hitz: It is as much the duty of Congress to determine whether its Acts are ones which properly meet the need as it is to pass them in the first place.

Mr. Donner: The issue here isn't whether the committee ever had a legislative purpose in conducting any hearing, but whether it had a legislative purpose in conducting this hearing, Your Honor.

Mr. Hitz: Actually, I hadn't concluded the precise offer with respect to this report, before objection was made. I am particularly stressing pages 1 and 2 of this report, although my offer is for the entire document. I will also have an offer with respect to particularly pages 22 and 23, although again I say that this annual report for the preceding year is in its entirety relevant to whether or not this committee had a legislative purpose and exercised it in the subsequent year of 1955, which is the year at issue.

The Court: Well, now, Mr. Hitz, this committee ceased in January of 1955, the committee which made the report in 1954.

Mr. Hitz: Yes.

The Court: Do you contend it is a continuing committee [fol. 51] although the membership changes?

Mr. Hitz: Yes. It is a continuing statutory committee for one thing, and even if it were not—and we don't contend this—its successor committee, having the same authority, would have the same duties, and consequently it would be its watchdog function, among other functions, to observe the operation of all Acts of Congress which fall within its scope. Of course, the internal security laws would be the most obvious ones, and this was one of them, the Communist Control Act of 1954.

Now, Mr. Donner's argument appears to be that since, in August 1954, there was passed an internal security act with respect to labor unions, that the committee of Congress that gave birth to it can never again concern itself with that particular Act, how it is operating, if it is too strong, too weak, whether it is functioning, whether the agencies charged with its operation are performing their duty.

Mr. Donner: No, Your Honor, that isn't my argument. My argument is that what happened in connection with the passage of this law in August 1954 doesn't show or prove what the committee intended or did in connection with the calling of the defendant in this case to give testimony: that the legislation was completed in August 1954. There is no further showing of any continuing interest in the legisla-
[fol. 52] tion by the committee, and it seems to me that we have no right to presume it.

Mr. Hitz: It shows there was a legislative field into which this committee had previously entered, in which it could enter again under the same resolution creating it.

The Court: I rather think you look to the statute creating the committee, to determine pertinency.

Mr. Hitz: I think that is true.

The Court: Then, I don't see the necessity for Exhibit Number 7.

Mr. Hitz: It may not be necessary, but we think that it is relevant and is cumulative on whether or not they did in fact have the legislative purpose. The defense has indicated in this case that its principal point is going to be that there was a lack of legislative purpose in entering this field and in calling this witness; that it was to do something else. We can show from the resolution that there were certain powers that were granted to this committee, and

by this document we are showing that there were certain acts that had been performed by this committee pursuant to that power, that they had undertaken them, that they were still performing them.

Now, we concede that a committee of Congress could investigate within its proper field, even though no legislative recommendations ever came from that committee. But [fol. 53] where we can show that some did, we can show that there actually was a performance of a legislative function by the committee. And we are doing that. It is entirely cumulative, but it doesn't make it irrelevant.

The most recent case in the Court of Appeals, the Watkins decision by the full bench, made quite a point of the fact that the Internal Security Act of—the Communist Control Act of 1954 had been passed by Congress in the same year in which the hearings were held. We are dealing now with the subsequent year and the operation of that Act.

Mr. Donner: Your Honor, may I interject a word? In the Watkins case, the defendant in that case was called pursuant to a hearing, the purpose of which was to gather facts to pass the Internal Security Act Amendment of 1954. The Court of Appeals said, in other words, the purpose of the committee's hearing was to aid it in its study of a proposed amendment to the Internal Security Act of 1950. That amendment was in fact enacted into law four months after appellant's refusal to testify. It made unavailable to labor unions found to be Communist-infiltrated, procedures established in the Labor-Management Relations Act of 1947. This is a proper example of the exercise of a legitimate legislative purpose.

This is after the committee recites the announcement at the commencement of the hearings in which Mr. Watkins [fol. 54] was involved, and in which Chairman Velde said that that was the purpose of the hearing.

Now, it seems to me that that is a far cry from a situation in which, after a law is passed, an asserted legislative purpose is found from the fact that it has been passed some seven months earlier. Here, the law was prospective and the testimony was elicited for the purpose of getting information about the law.

The Court: It seems to me that this is more properly rebuttal, and if the defendant offers testimony to show that

there was no legislative purpose, but only a purpose to expose the defendant's private affairs, private relationships.

Mr. Hitz: Very well.

The Court: At this time, I will——

Mr. Hitz: If they offered none, then our exhibit would not be admissible, on that theory.

The Court: No, because it seems to me that I would look to the resolution, and if it was pertinent to the resolution that would end the matter, wouldn't it?

Mr. Hitz: Well, I think it would end the matter; but I think this is cumulative of the fact that there was legislative purpose. As I understand the state of the cases on that subject, it is that if a field were proper for the committee to enter and investigate because it is a field in which it could legislate, it will be presumed that they did in fact [fol. 55] have that intention to legislate, legislative purposes, when they entered the field. I understand that to be the law which was established in McGrain against Doherty, and that it has not been superseded by language in the Sinclair case, which is that the presumption of innocence is stronger than any presumption of regularity, because that is not a presumption of regularity. But if there is any question about that, the Government should certainly be allowed to prove in its case in chief that there not only was a possibility that the committee could enter the field, by an examination of the resolution, and enter it for a legislative purpose, but that the committee actually did enter it for that purpose, as is demonstrated by legislation that flowed from it—although again, I say we don't have to prove legislative recommendations; if we can, it bolsters the fact that they did in fact profess that purpose.

In other words, where we can rely upon a demonstrated fact, we would prefer not to rely upon a presumption.

The Court: Well, on page 2 there is this statement:

> "This report reflects the committee's findings on the Communist Party's endeavors to secure a foothold in the vital, basic industries of this country."

Mr. Hitz: Could I have the approximate line of that, Your Honor?

The Court: The third paragraph from the top, halfway through the paragraph.

> [fol. 56] The Court: "The committee points out in this report that the Communist Party had directed its intellectuals and white collar workers to leave employment in their own chosen fields and to obtain positions in industries vital to defense, such as steel, electricity, and the Maritime. In many cases persons were required to leave their homes and travel to distant cities in order to carry out this Communist directive. The committee issued this report to warn and alert the Congress and the industries involved regarding these efforts by the Communist Party in the United States."

That seems to me to be relevant.

Mr. Donner: Well, Your Honor, it doesn't seem to me to be relevant to the question of whether or not the purpose of calling Mr. Gojack was to expose him or to ascertain facts with relationship to proposed or contemplated legislation.

The Court: Well, he is an officer of one of these very— of a union engaged in one of these very industries: to wit, electricity.

Mr. Donner: But Your Honor, this is a report issued by the Congress, issued by the committee, sometime before Mr. Gojack was called.

The Court: January 26, 1955, is the date that it was issued.

[fol. 57-58] Mr. Donner: That is correct. And it covered the year 1954.

The Court: 1954. I overrule your objection. It will be received.

* * * * * * *

[fol. 59] Thereupon, FRANK S. TAVENNER, was called as a witness by counsel for the Government and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Hitz:

Q. Mr. Tavenner, your full name, please?
A. Frank S. Tavenner, T-a-v-e-n-n-e-r, Jr.
Q. Your occupation, Mr. Tavenner?
A. Attorney.
Q. And with whom?
A. I am counsel for the Committee on Un-American Activities of the House of Representatives.
Q. How long have you been connected with the legal staff of the committee?
A. Since May 1, 1949.
Q. Mr. Tavenner, in 1955, how many Members of the House were on the Un-American Activities Committee?
A. Nine.
Q. Are you familiar with the fact that John Gojack was supoenaed to appear before the Un-American Activities Committee in the year 1955?
A. Yes, I am.
Q. Was he so subpoenaed?
[fol. 60] A. Yes, sir.
Q. Was he subpoenaed to appear more than once—
A. Yes, he was.
Q. —in the year?
Will you tell us on what date, for what date he was first subpoenaed to appear?
A. On February 15th he was subpoenaed to attend a hearing of the committee on February the 21st at Fort Wayne, Indiana.
Q. At that time, was Mr. Gojack represented by an attorney, to your information?
A. Yes, he was.
Q. Who was that?
A. Mr. David Scribner.
Q. Did you receive a communication from Mr. Scribner subsequent to the issuance of the subpoena for Mr. Gojack?

A. Yes, sir, I did.

Q. Will you just tell us what it related to?

A. Well, I first received a— Well, first there was received by the committee a telegram from Mr. Scribner in which he asked that a continuance be granted for the appearance of Mr. Gojack as a witness. That telegram bore date of February 16th. He asked for the hearings to be postponed "to any time after next week," because of his extremely heavy schedule, and also because of NLRB election at [fol. 61] Magnavox Company.

Q. That is, for an extension beyond the week of the 21st?

A. Yes, sir.

Q. Was that extension granted, Mr. Tavenner?

A. Well, on February 17th, the clerk of the committee replied by telegram, advising Mr. Scribner that his application for a continuance would be denied, or was denied. Later on that day, Mr. Scribner called me, and after making some investigation, I found out the situation regarding the proposed election at Magnavox, and I went to the floor of the House and got the chairman of the committee, Mr. Francis E. Walter, from the floor of the House, and after explaining the situation to him, Mr. Walter agreed that the hearings be postponed. I came back to my office and telephoned Mr. Scribner, or maybe I advised him by wire, I am not certain, that the hearings would be continued.

Q. At that time, did you give Mr. Scribner a date to which they were continued, or merely to tell him that they were continued beyond the week that he wished to be free?

A. My recollection is that I got word to him in some manner that the hearings would be continued.

Q. Subsequently, did you inform Mr. Scribner of the exact date to which they were continued?

A. Yes, sir. On the same day, February 17th, Mr. [fol. 62] Scribner wrote me, thanking me for giving favorable consideration to his request for postponement. In this letter he says he confirms

"our telephone conversation this afternoon, wherein you so advised me and wherein I advised you that Mr. Gojack, who has been subpoenaed, will appear when the hearing is rescheduled."

Quoting further from the letter, he states:

"I assume that you will give me reasonable advance notice of any new scheduled date for the appearance of Mr. Gojack."

Q. Did you give notice of the new scheduled date of appearance?

A. Yes, sir. On the following day I succeeded in having a definite date fixed for the postponed hearing, and I so advised Mr. Scribner by letter; that is, of February 18th. In that letter I acknowledged receipt of the letter of February 17th from Mr. Scribner, in which, quoting from the letter:

"You confirm our telephone conversation that you would have Mr. Gojack appear when the hearing is rescheduled and in which you ask that reasonable advance notice be given you of any new scheduled date for Mr. Gojack's appearance."

Continuing to quote from the letter:

[fol. 63] "At the direction of the chairman, I am advising you that the hearing is rescheduled to take place on Monday, February 28, 1955, in Room 225, Old House Office Building, Washington, D. C., at 10:30 a.m."

Q. Did that end the matter, or was a subpoena issued for the date arrived at?

A. I decided that inasmuch as the original hearings had been set for Fort Wayne, and that we were now having the hearing in the city of Washington, that I should issue a new subpoena, which I did. That subpoena was issued, I believe, on the 18th of February, and served—the subpoena was issued on the 23rd of February and was served that day, or at least, service of the subpoena was on the 23rd day of February, for Mr. Gojack's appearance in Washington on the 28th day of February.

Q. All right, sir. Then, he did appear, did he, on the 28th?

A. Yes, sir.

Q. Where did he appear before the committee?

A. In the Old House Office Building in Washington, D. C.

Mr. Hitz: Your Honor, we will make some references now to Government Number 8, which is the copy of the full hearings. I have an extra copy, if Your Honor would care to have me pass it up. You might want to make some notations in it, instead of the evidence copy—as you wish.

[fol. 64] The Court: Very well.

(Document handed up to Court)

Mr. Hitz: I also have an extra copy, if you would care to have it, of Government Number 5, which is the report, not encumbered with the certification. (Handing up to Court)

The Court: Thank you.

Mr. Hitz: Your Honor will note that in the top right-hand corner, that does not carry the number of the report. That is for the reason that this particular copy I am handing you, although I had with it one which ultimately was numbered, was printed in an earlier batch than those that bore the number. That is the only difference.

I have here, too, an extra copy of Government Number 7, which is the 1954 report, if Your Honor would care to have that. (Handing up to Court)

The Court: Very well.

Mr. Hitz: And I can give any of those that the defendant wishes to have, too.

Mr. Donner: Could we have a set of all three, Mr. Hitz?

(Documents handed to Mr. Donner)

By Mr. Hitz:

Q. Mr. Tavenner, I wonder if now we could go back a little bit, and tell us what interest the committee had in obtaining the testimony of John Gojack, other than that he is just one more person from whom internal security [fol. 65] testimony could be adduced?

Mr. Donner: I object to this, Your Honor. Whatever interest the committee might have had in Mr. Gojack should be disclosed from the official hearings. I understand that the hearings involving Mr. Gojack have been admitted in evidence here. The report concerning Mr. Gojack has been admitted in evidence here. I don't think that a statement of the committee's interest should be given in this informal

way. If the committee had some purpose in calling Mr. Gojack, that purpose should be reflected in some formal action of the committee, such as an announcement at the beginning of the hearings as to why Mr. Gojack was called, or some other resolution or document of that kind.

For that reason, I would object to Mr. Tavenner being, stating now orally what the interest of the committee was.

The Court: Well, he was counsel for the committee, and if he has any personal knowledge, I think he should be permitted to give it, not what somebody told him.

Mr. Donner: Your Honor, but presumably the hearings dealing with Mr. Gojack are printed, the report has been printed, and certainly somewhere the committee should have reflected in its official pronouncements why it called Mr. Gojack. It seems to me that we face the danger of self-serving testimony, after the fact testimony, about why the [fol. 66] committee called Mr. Gojack. At the beginning of the hearings, there is a statement of the purpose in holding the hearings, and it seems to me that the committee is bound by it at this time.

The Court: How does the question read, Miss Reporter?

(Pending question read by the reporter.)

The Court: Well, in its present form, I will sustain the objection to that question. I think you may ask what business the committee was then engaged in, but make it factual, not conclusional.

By Mr. Hitz:

Q. Mr. Tavenner, in calling Mr. Gojack as a witness, what field was the committee engaged in investigating at that time?

Mr. Donner: Your Honor, I object unless reference is made to some official action of the committee, whether taken privately or publicly, but nevertheless some official action, and not Mr. Tavenner's opinion.

The Court: That isn't opinion testimony. I overrule your objection.

Mr. Donner: All right.

A. The committee had been engaged intermittently in the investigation of Communist Party activities on the part of

officials of the United Electrical, Radio and Machine Workers of America, from August 1949 until the date of this [fol. 67] hearing, and later. The committee had heard testimony in July 1951 from a former president of District 7, comprising the States of Ohio and Kentucky, in which——

The Court: District 7 of what?

The Witness: Of the United Electrical, Radio and Machine Workers of America.

A. (Continuing)—which gave the committee an insight into the extent of Communist Party membership.

Mr. Donner: I object on the ground it is a conclusion, Your Honor.

The Court: Sustained.

By Mr. Hitz:

Q. What did that—First, will you name that witness?

A. Mr Decavitch.

Q. Will you spell it for the record, please?

A. D-e-c-a-v-i-t-c-h.

The Reporter: Capital C?

The Witness: Just capital D.

By Mr. Hitz:

Q. When Mr. Decavitch gave his testimony—and you say it was in 1951?

A. Yes, sir.

Q. (Continuing)—had he been a member of the UE union?

[fol. 68] A. Yes, sir, he had been president of District 7 for a number of successive terms.

Q. Had he been a member of the Communist Party——

A. Yes.

Q. —according to his testimony?

A. Yes.

Q What did he say?

Mr. Donner: I object, Your Honor. If Mr. Decavitch testified,—

The Court: The record speaks for itself, if they object on that ground.

By Mr. Hitz:

Q. Were you there at the time?
A. Yes, sir.

Mr. Hitz: We think now he can state—

The Court: Well, the record is the best evidence of what Mr. Decavitch testified to.

Mr. Hitz: Your Honor, I believe the person present can testify as well as could the stenographer. I have a case on that. I didn't bring it to court with me.

The Court: Well, I think so, too. But I think that it is a little more reliable to get the testimony itself.

Mr. Hitz: The objection wasn't based on the— Was it based on the best evidence rule?

Mr. Donner: Yes.

[fol. 69] Mr. Hitz: Do I understand it to be?

Probably the record would be a secondary document.

Mr. Donner: Your Honor, this is something—

The Court: Well, undoubtedly you have his testimony written up. Haven't you?

By Mr. Hitz:

Q. Have you Mr.——
A. I happen to have the testimony with me.
Q. You have it with you?
A. Yes, sir.

The Court: Isn't that much better than his recollection of what he testified to?

Mr. Hitz: Well, it might be, if we were trying to prove the truth of each statement that he made. All we are doing, however, is to try to prove that there was some reasonable cause for the committee to ask for Mr. Gojack, over and above that he was just one more individual, and we thought that a summary of that testimony that Mr. Decavitch had said so and so, by way of summary, would be ample. We can, of course, have Mr. Tavenner read it all.

The Court: I sustain the objection to Mr. Tavenner's giving his summary of what Mr. Decavitch testified to, inasmuch as you have a written record of it.

Mr. Hitz: Yes, Your Honor.

[fol. 70] By Mr. Hitz:

Q. How long is the testimony, Mr. Tavenner?

The Court: You don't have to give it all, do you?

A. It is 28 pages.

Mr. Hitz: 28 pages. I think I could ask some questions that might pinpoint this a little bit, and then if the defense still objects to it, we will read all of this, and the next witness' testimony, too, if the Court will—

The Court: You can offer it. It doesn't have to be read.

Mr. Hitz: I see.

By Mr. Hitz:

Q. Mr. Tavenner, did Mr. Decavitch give any testimony with reference to his opinion as to the extent of the infiltration of the UE by the Communist Party? Just answer that he gave an estimate or he did not.

A. He did.

Q. Now, don't answer this until there is time for an objection to be made if they care to make it. In what way did he characterize the extent of the infiltration? Will you answer—

A. As being 99.9 per cent pure Communist Party members.

Q. Did you at a subsequent time receive further testimony from anyone concerning the extent of Communist infiltration of this particular UE, this union?

[fol. 71] A. Yes, sir. There was a witness by the name of Jack Davis who testified before the committee in July 1953 in Albany, New York. He had been an organizer of the Communist Party for that district—excuse me, an organizer for the United Electrical, Radio and Machine Workers for that district, which was District Number 3, comprising the area in the State of New York north of Yonkers.

Q. Was it public testimony?

A. Yes, sir.

Q. According to his testimony, had he ever been a member of the Communist Party, sir?

A. Yes, sir, he so testified.

Q. Did he give any estimate of his opinion of the extent

of Communist infiltration of the UE? Just answer he gave an estimate or he did not.

A. He did.

Q. Would you be good enough to tell us what that estimate was, if you can recall?

A. He stated that all of the organizers for the United Electrical, Radio and Machine Workers who attended the meetings of the UE, consisting of twelve, averaging twelve to twenty, were members of the Communist Party.

Q. Was this a meeting of districts or what type of a meeting?

A. These were meetings of organizers of the UE, held in-
[fol. 72] termittently at various places in District 3. He testified there were at least five of such meetings.

The Court: What was the date of his testimony?
The Witness: July 1953.

A. (Continuing) He further testified as to——

The Court: Well, there is no question pending.
The Witness: Excuse me.

By Mr. Hitz:

Q. What else did he testify to?

A. He testified as to his experience at Lynn, Massachusetts, while still an organizer of the UE.

Q. Did he give testimony concerning that aspect of it with respect to infiltration by the Communist Party?

A. He did, but he did not attempt to describe the number of those engaged or the percentage of the employees of UE who he knew to be members of the Communist Party.

Q. Did he say whether there was infiltration by the Communist Party at that time——

A. Yes, sir.

Q. —and place?

A. Yes, sir.

Q. When Mr. Gojack was subpoenaed to appear before the committee, was he or was he not known to be an officer of the UE union?

A. Yes, sir, he was.

[fol. 73] Q. In what capacity?

A. I believe—the information that the committee had

was that he was a vice president of the national union and a president of his district.

Q. District what, if you recall?

A. I believe it was District 9.

Q. Is that the same national UE union that Mr. Decavitch had testified about, and that Mr. Davis had testified about?

A. Yes, sir, that is the abbreviation for the United Electrical, Radio and Machine Workers of America.

Q. Before Mr. Gojack gave his testimony, to your knowledge was the committee possessed of information concerning any possible subversive activities of one Henry Aron, A-r-o-n?

A. Yes, sir.

Mr. Donner: I object to this.

The Witness: Excuse me, sir.

Mr. Donner: I object to this,—

The Court: Overruled.

Mr. Donner:—on the ground that if the committee had any evidence which is relevant to why this question was asked, I think it should be produced in a documentary form, rather than on the basis of Mr. Tavenner's recollection.

The Court: You are a little premature in your objection. His question was, as I recall it, whether the committee was [fol. 74] possessed of any information, and he answered, "Yes, sir." Now, the next question, of course, raises the question which you had in mind. Then I will rule on it.

Ask the next question.

By Mr. Hitz:

Q. What information was the committee possessed of concerning those activities?

Mr. Donner: I now press my objection.

The Court: Now, if that is in writing, the writing should be produced. If it was verbal, then that is another thing. Was it in writing?

Mr. Hitz: I wonder if I could be heard on that subject, Your Honor? It isn't the truth or the accuracy of the information possessed, but the fact that it was in the hands of the committee. It could be written, oral, rumor, investigative, or whatever.

The Court: Well, whatever they have, I want the best evidence, Mr. Hitz. That is my ruling.

By Mr. Hitz:

Q. All right, Mr. Tavenner, would you be—
A. There is sworn testimony—Excuse me, sir.
Q. Go ahead. There is sworn testimony?
A. There is sworn testimony in regard to it, but I do not have it with me.

The Court: Will you bring it down in the morning?
[fol. 75] Mr. Hitz: I have it here. (Handing book to witness)
The Court: Oh.

By Mr. Hitz:

Q. By whom was it given, Mr. Tavenner?
A. By Mr. Walter Steele.
Q. Under oath?
A. Yes, sir.
Q. Public hearing?
A. Yes, sir.
Q. Of this committee?
A. Yes, sir.
Q. What year?
A. 1947.
Q. What did he say? Will you turn to it and read it?
A. This was a list of officers of the Communist Party, United States of America, introduced in evidence by Mr. Walter Steele in the course of his testimony before the Committee on Un-American Activities on July 21, 1947.
Q. In what city? Did you tell us it was Washington, or——?
A. Washington, D. C., in the House of Representatives.
"District of Indiana, State of Indiana, Chairman"—— Excuse me, what name did you ask me for?
Q. Henry Aron.
A. "Secretary, Henry Aron."
[fol. 76] Q. That is, secretary of the Communist Party for that district?
A. Yes, sir.
Q. Did the committee, to your knowledge, have any in-

formation concerning subversive activities of Elmer Johnson at the time that Mr. Gojack gave his testimony that is in question here?

A. Yes, sir.

Q. Was it received in a session before the committee?

A. Yes, sir.

Q. Under oath?

A. Yes, sir.

Q. Who gave it?

A. Mr. Walter Steele.

Q. The same man who talked about Aron?

A. Yes, sir.

Mr. Donner: Your Honor, may I interpose this objection. Mr. Tavenner is now giving testimony about the identification of two individuals, Mr. Aron and Mr. Johnson, as Communists in 1947, presumably to fill in the question of pertinency as to the witness's associations with them in 1947. I submit that that in itself shows how remote the question was and how lacking in pertinency it was. Because what relevance or what pertinence does the fact that this witness had associations with them in 1947 have to any matter which the committee had legitimately under inquiry? [fol. 77] That is some seven or eight years prior to the time the interrogation was undertaken.

The Court: Overruled.

You may answer.

Mr. Hitz: Do you have in mind the question, Mr. Tavenner?

The Witness: No, I do not. I'm sorry.

Mr. Hitz: I will frame another. It may be quicker.

By Mr. Hitz:

Q. What information did the committee receive from Mr. Steele on the question of subversive activities of Elmer Johnson, at the time you have indicated?

A. Mr. Elmer Johnson was chairman of the district of Indiana, Communist Party.

Q. What year?

A. That testimony was given in 1947.

Q. No, I mean, that Johnson was chairman of the Indiana Communist Party for what year.

A. (Inspecting document)

Q. Was it the same year that Aron was—

A. Yes, it was.

Q. —named as secretary?

A. (Still inspecting document) I would have to read considerable testimony to fix the exact year.

[fol. 78] Q. Would you endeavor to do that?

A. You mean for me to do it now?

Q. Yes, please.

Mr. Donner: What is the pending question?

Mr. Hitz: For what year did Mr. Steele give his testimony concerning Elmer Johnson?

Mr. Donner: All right.

The Court: I thought he said 1947.

Mr. Hitz: He gave it to—Mr. Steele gave the testimony in 1947, but I wanted to find out to what year it related with respect to—

The Court: That is another matter.

A. (After inspecting document further) The testimony does not refer to any year, but it speaks in the present tense, in this sense. It refers to the positions—Mr. Steele referred to the positions that the individuals "hold" in the Party.

By Mr. Hitz:

Q. All right, sir.

A. And the addresses of the national and state headquarters thereof.

Q. When Mr. Gojack testified before the committee at the time in question here, was the committee, to your knowledge, possessed of any information concerning subversive activities by the American Peace Crusade?

[fol. 79] A. Yes.

Mr. Donner: I object to that, Your Honor. If there is a document in existence, we prefer to have it referred to.

By Mr. Hitz:

Q. Is there a document on that, Mr. Tavenner?

A. Yes, sir.

Q. What is the document?

A. The committee, on April 1st, 1951, made a report to Congress on the Communist peace offensive.

Q. As found in what document?

A. The document is entitled, "Report on the Communist Peace Offensive, a Campaign to Disarm and Defeat the United States."

Q. Is the term "Communist front organization" a term used by the Un-American Activities Committee?

A. Yes, sir.

Q. Was it, at the time Mr. Gojack testified?

A. Yes, sir.

Mr. Donner: Your Honor, may I interpose the objection to this whole line of questioning on the ground that Mr. Gojack's associations with the American Peace Crusade, a so-called Communist front organization, are too remote from the subject matter under inquiry, or which will be legitimately under inquiry, to be pertinent, and I will object on that ground. This is not an inquiry——

[fol. 80] The Court: Isn't that the way the Watkins decision held, as it first came down? Hasn't that been changed now by the decision *en banc?*

Mr. Donner: Your Honor, there was certain—that isn't quite—I am not making the objection as to remoteness in time. As I recall the Watkins case, in both of its phases, one of the points that was made was that a certain area of interrogation anteceded the Taft-Hartley Act and anteceded certain statutes in support of which—from which the committee claimed a legislative purpose. That was overruled by the Court of Appeals, when it reversed the initial panel.

But the point I am making here is that a so-called Communist front organization—I am not making the time point; I am making the point that a so-called Communist front organization, whatever it might be, like the American Peace Crusade, is too remote from the kind of inquiry that is claimed here, to be pertinent to the matter under inquiry, and I don't think that issue was involved in the Watkins case, Your Honor.

The Court: What do you have to say, Mr. Hitz?

Mr. Hitz: We disagree with that. We think that if the American Peace Crusade, as we expect to be able to show, had been listed as a Communist front organization, that Mr. [fol. 81] Gojack's participation in its activities was a

proper field of inquiry to make directly of him by this committee.

The Court: What is the question pending now?

(Last question and answer read by the reporter.)

Mr. Hitz: So I don't think there is a pending question: I think perhaps the objection was a little bit early.

The Court: Very well.

Mr. Donner: Oh, I'm sorry, Mr. Hitz.

Mr. Hitz: That's all right.

By Mr. Hitz:

Q. Mr. Tavenner, what did the term—

Mr. Donner: Your Honor overruled the objection, I take it?

The Court: No, I must have the objection specific now. I don't know that yours was sufficiently specific for me to rule on. You said something about all this line of testimony.

Mr. Donner: Your Honor, may I restate it?

Mr. Hitz: I wonder if we could get a question so—

The Court: You should object to each question as it comes along.

Mr. Donner: I will, Your Honor.

By Mr. Hitz:

Q. When Mr. Gojack was testifying before the committee at the time in question, what was the meaning of "Communist front organization" in the minds of the committee?

[fol. 82] A. Well, a Communist—

Mr. Donner: I object. I think this is irrelevant.

The Court: What would be the relevancy of that, unless it was known to this defendant, that meaning?

Mr. Hitz: Well, Mr. Tavenner has said that there were certain listed Communist organizations that had been found to be so by the committee, in a certain publication. He is about to relate just in what fashion they were listed, and who they were. We expect to be able to elicit the information that this organization was one of them.

The Court: I thought your question was, What was the meaning of "front."

Mr. Hitz: It is. It is a preliminary question—

The Court: I say, what has that to do with this case, unless that meaning was known to the defendant?

Mr. Hitz: I don't think the defendant has anything to do with it.

The Court: If he doesn't understand the meaning of the question, of course, he can't be guilty, can he?

Mr. Hitz: Well, I am addressing this evidence to the pertinency of what the committee was asking, regardless of what the witness knew about it or thought.

The Court: Unless you intend to follow up the testimony that he knew what was meant by "front," I will sustain the [fol. 83] objection to it. Maybe his own testimony shows that. I haven't read it.

Mr. Hitz: We are dealing here, Your Honor, with the right of the committee within a particular field to ask a question, not whether it was known to the defendant, and therefore willfully or knowingly was refused of answer. We are at stage one, whether it could be asked in the first place, not whether it could be refused.

Mr. Donner: Your Honor, Mr. Hitz's argument would be more impressive but for one thing. The count to which this line of testimony is directed says,

> "Did you take active part in the Peace Program of Washington, which was organized by one of the front organizations?"

In other words, it was a question asked of the witness, and so Your Honor's point that he had to know the meaning of the question, it seems to me, is obvious.

The Court: Of course, if it was organized by one of the front organizations known as the American Peace Crusade. Mr. Hitz can ask whether or not there were certain things known to the witness about the American Peace Crusade, but he hasn't done that. He has asked for a definition of "front." I sustain the objection to it.

By Mr. Hitz:

Q. Mr. Tavenner, in what fashion was the American [fol. 84] Peace Crusade listed in the document of the committee that you have already referred to?

A. It is listed in the guide to subversive organizations

of the committee as a Communist front organization. I am not certain that I have the exact language.

Q. Is that in the guide?

A. Yes sir.

Q. Here is it. (Handing pamphlet to witness)

A. It is cited by the congressional committee on Un-American Activities on February 19, 1951, as an organization which the Communists established as a new instrument for peace offensive in the United States, and which was heralded by the Daily Worker with the usual bold headlines "reserved for projects in line with Communist objectives." That was the citation.

Q. Now, under what subject of that particular publication, the guide, under what subject is the American Peace Crusade listed?

Mr. Donner: I object to this, Your Honor. It seems to me that the only relevance this can have, this question and this whole line of inquiry, is establishing that this was a way of getting at the fact or the claim that the defendant in this case is a Communist.

Now, unless the Government can show in some way that everybody who was associated with that organization was a [fol. 85] Communist, it seems to me that it is not relevant. It is so remote from the matter under inquiry, the fact that someone belonged to a front organization, it seems to me, is too remote even to discuss. There may be all kinds of reasons why people belong to a front organization, and all kinds of people belong to them. It is just a kind of a dragnet question, in my opinion.

Mr. Hitz: That is just what the committee wanted to find out, and asked Gojack, and he wouldn't tell them.

The Court: I overrule the objection.

You may answer the question.

A. It is listed as one of the front organizations.

By Mr. Hitz:

Q. Now, what is a front organization? What did it then mean to the committee?

A. A front organization—

Mr. Donner: I object.

The Court: Wait a minute.

The Witness: Excuse me, sir.
The Court: Overruled.

A. A front organization means an organization in the United States other than a Communist action organization, which is substantially directed, dominated or controlled by a Communist action organization, and is primarily operated [fol. 86] for the purpose of giving aid and support to a Communist action organization, a Communist foreign government, or the world Communist movement. (Reading)

Mr. Donner: May I ask what Mr. Travenner is reading from now?
The Court: Yes.
The Witness: I am reading from the definition of the Communist front organization as contained in the Internal Security Act of 1950, which was drawn up by the Committee on Un-American Activities after many hearings, and was enacted into law.

By Mr. Hitz:

Q. Now, is it your testimony that the committee was possessed of information that the Communist Peace Crusade was or was not such an organization?

Mr. Donner: I believe you meant American Peace Crusade. Isn't that correct?
Mr. Hitz: What did I say?
Mr. Donner: Communist.
Mr. Hitz: I'm sorry.

By Mr. Hitz:

Q. (Continuing)—that the American Peace Crusade was or was not such an organization?
A. Yes, sir.
Q. That it was which?
[fol. 87] A. That it was such an organization.
Q. Before Mr. Gojack's testimony was given?
A. Yes, sir.

. . . . . .

[fols. 88-91] **Transcript of proceeding**—May 1, 1956

. . . . . .

[fol. 92] FRANK S. TAVENNER, JR., the witness at the time of adjournment, resumed the stand, was examined and testified further as follows:

Direct examination. (Continued)

By Mr. Hitz:

Q. Mr. Tavenner, I think we had gotten to the point where we were discussing what information was in the hands of the committee, to your knowledge, concerning the American Peace Crusade, and I think you had testified that it was listed in a publication of the committee published prior to the testimony of Mr. Gojack, which publication was entitled, "A Guide to Subversive Organizations," as a Communist front organization. Is that right, sir?

A. Yes, sir.

Q. And then you had read the definition that is contained in that document of what a Communist front organization is.

A. Yes, sir.

[fol. 93] Q. With that background, I wonder if you would tell us what information the committee had of public record, to your knowledge, concerning a connection if any between Mr. Gojack and that organization. And I would like to hand you the volume containing the reports of the hearings, of part of them, for the year 1951 and ask you to refer to House Report 378 and tell us whether in that report there is any factual matter concerning a possible connection between Mr. Gojack and the American Peace Crusade. Just answer yes or no.

A. Yes, there is.

Q. Would you be good enough to give us the name and the date of the report?

A. The name of Mr. John Gojack—

Q. No, the name and the date of the report.

A. Oh, of the report.

Mr. Donner: Your Honor, before the witness answers, may I re-interpose my objection that this is irrelevant to the establishment of whether or not the inquiry here had a legislative purpose.

The Court: Overruled.

A. (Continuing) This is "Report on the Communist 'Peace' Offensive—A Campaign to Disarm and Defeat the United States."

By Mr. Hitz:

[fol. 94] Q. And the date?

A. The date is April 1, 1951.

Q. And that was by the Un-American Activities Committee, was it, sir?

A. Yes, sir.

Q. To the full House?

A. Yes, sir.

Q. Will you refer to page 135 of that and tell us what information it states that the committee had concerning Mr. Gojack's connection with the American Peace Crusade?

A. The name of Mr. Gojack appeared as an initial sponsor on a letterhead dated February 1951, of American Peace Crusade, 1186 Broadway, New York 1, New York.

Q. Along with other people?

A. Yes, sir.

Q. Will you turn to pages 136 and 137 of that report and tell us whether that indicates that the committee had information, additional information concerning his connection with that organizaion?

A. Yes, sir.

Q. What is that?

A. Excuse me, is this the same report?

Q. Yes, it is.

A. The name of Mr. John Gojack appears as one of the signatories to a leaflet entitled, "Let the People Speak for Peace," published by the American Peace Crusade, entitled, [fol. 95] "The Washington Program," and the subtitle of which is, "Bring Our Boys Home from Korea. Make Peace with China Now."

Q. All right, sir.

The Court: Do you have in your files, Mr. Hitz, an extra copy of the indictment?

Mr. Hitz: Yes, I do.

The Court: May I have it?

Mr. Hitz: Yes, sir.

The Court: I want to make some notations as I go along. Of course, I did not want to write on the court's copy.

Mr. Hitz: Yes, I understand. I am going to try to offer Your Honor working copies of all of our documents.

The Court: All right.

(Papers handed up to Court)

By Mr. Hitz:

Q. Mr. Tavenner, can you tell us whether or not the American Peace Crusade has been cited by the Attorney General of the United States as a Communist front organization?

Mr. Donner: I object, Your Honor. I think the record should speak for itself on that.

The Court: Well, if he calls for the best evidence, I think his objection is well taken.

[fol. 96] Mr. Hitz: Very well.

By Mr. Hitz:

Q. Did the committee, Mr. Tavenner, hear testimony from a lady named Dorothy Funn, F-u-n-n?

A. Yes, sir.

Q. Prior to the testimony of Mr. Gojack?

A. Yes, sir.

Q. Will you tell us briefly who Miss Funn is?

A. Miss Funn had been a legislative representative of an organization—

Mr. Donner: Before Mr. Tavenner continues, I presume Miss Funn's testimony also was the subject of a printed hearings, and I think we should work from the printed hearings, rather than Mr. Tavenner's summary of them.

The Court: Is that true, Mr. Tavenner?

The Witness: Yes, sir.

The Court: I will follow counsel's suggestion,—

Mr. Hitz: Your Honor, I think if Mr. Tavenner knows who the lady is, and some of her background, he can give that,—

The Court: If he knows it independently; but he has not said that he does.

Mr. Hitz: He has not been asked that question.

The Court: Well, it was such a general question, I sustain the objection. If you wish to make it specific, you may do

[fol. 97] so, and I will rule on the objection if one is made then.

PORTIONS OF TESTIMONY OF MRS. DOROTHY K. FUNN READ INTO RECORD.

By Mr. Hitz:

Q. Would you be good enough to turn to Miss Funn's testimony of May 4, 1953, page 1195, and read it, read all of it, Mr. Tavenner?

A. "Testimony of Mrs. Dorothy K. Funn, accompanied by her counsel."

Mr. Hitz: It is approximately sixty pages.

The Court: Well, sixty pages will not be read, Mr. Hitz.

Mr. Hitz: I am attempting to summarize it, Your Honor, and—

The Court: Well, you can pinpoint certain sections to answer those questions, if you care to do so.

By Mr. Hitz:

Q. Would you be good enough *enough* to turn to 1195 and read that portion of Miss Funn's testimony which describes her own activities and her background, sir?

A. Yes.

Mr. Donner: I object to that on the ground of relevance, Your Honor. I don't know what relevance this has to any issue in this case.

The Court: Overruled.

Proceed, Mr. Witness.

[fol. 98] A. (Continuing) "Mr. Kunzig. Where are you presently employed, Mrs. Funn?

"Mrs. Funn. At the present time, I am a teacher in Public School 129, 604 Quincy Street, Brooklyn."

By Mr. Hitz:

Q. I'm sorry, I can't follow that on the page. Will you tell us if it is on 1195?

A. Yes, sir.

Q. Where is it?

A. About the upper quarter of the page.

Q. All right, sir. Now, will you read further.

A. "Mr. Kunzig. In what position?

"Mrs. Funn. I am an upper grade teacher, seventh and eighth year.

"Mr. Kunzig. How long have you been so employed, Mrs. Funn?

"Mrs. Funn. Well, I was employed by the City of New York from 1923 to 1943, at which time I resigned. I went back into the school system in 1947 and have so remained in that job.

"Mr. Kunzig. Where were you employed from 1943 on, when you said you left the school system?

"Mrs. Funn. In several capacities. One, as the administrative secretary for the Negro Labor Victory Committee; another, as legislative representative for the National [fol. 99] Negro Congress, with offices in Washington; another, as representative for the New York State CIO Political Action Committee during the 1944 presidential campaign, after which I went back to the previous job of legislative representative; and somewhere in between I also acted as the executive secretary for a Committee on Unity, made up of representatives of organizations and individuals interested in eliminating the cause that had made the riots in Harlem possible, about that time."

Q. Now will you please stop there a moment to see if there is some we can omit. (Looking at document)

I don't think there is enough at the moment to omit to make it worth while to break the continuity. Will you continue, please, sir?

A. "Mr. Kunzig. Mrs. Funn, the next question you specifically wanted me to ask you, Are you a Negro, Mrs. Funn?

"Mrs. Funn. I am.

"Mr. Kunzig. Did you maintain your residence in New York during the period you were out of the school system?

"Mrs. Funn. No, not all of the time. I was what you might term a commuter for part of the time. Then I did establish residence in Washington, D. C., for, oh, I would [fol. 100] say about two years, permanent residence for about two years.

"Mr. Kunzig. I see. Where was that residence?

"Mrs. Funn. 3100 Water Street, Northwest, Washington, D. C.

"Mr. Kunzig. You left Washington in what year?

"Mrs. Funn. I left Washington in late 1946, I should say about December, and came back to Brooklyn.

"Mr. Kunzig. To teach?

"Mrs. Funn. That is right.

"Mr. Kunzig. And now you are still teaching?

"Mrs. Funn. That is right.

"Mr. Kunzig. Mrs. Funn, when and where were you born?

"Mrs. Funn. I was born in Brooklyn, New York, June 7, 1903.

"Mr. Kunzig. Are you now a member of the Communist Party?

"Mrs. Funn. No, I am not.

"Mr. Kunzig. Have you ever been a member of the Communist Party?

"Mrs. Funn. Yes, I have.

"Mr. Kunzig. When did you become a member?

"Mrs. Funn. I joined the Communist Party in May 1939. [fol. 101] "Mr. Kunzig. And according to your recollection, when did you leave the party?

"Mrs. Funn. Actually, about June 1946. Ideologically, I would say that I had left it many months prior to that."

Q. Now, I think there is something we can omit there, Mr. Tavenner. Will you now turn to page 1205. Is that still the testimony of Mrs. Funn on the same occasion before the committee?

A. Yes, sir.

Q. And although I think I may have stated it, I would like to have you state it, because you are the witness; the date and year of this testimony.

A. This testimony was taken on the 4th day of May 1953.

Mr. Donner: Your Honor, I don't like to interrupt the examination, but may I inquire through Your Honor what is the purpose of this line of inquiry.

Mr. Hitz: I would be glad to state it.

The Court: Yes.

Mr. Hitz: She is about to identify Russell Nixon as a member of the Communist Party in a cell in Washington, D. C., made up entirely of lobbyists before Congress.

Mr. Donner: I object, then, Your Honor, on the ground of irrelevance.

[fol. 102] The Court: Overruled.

Mr. Hitz: Russell Nixon is the subject of one of our counts. In addition to that, we will offer from the hearings a letter written from Nixon to Gojack, in which he said, "Dear"—what did he call him, Mr. Tavenner?—"Comrade." or something like that.

The Court: When the time comes, you may offer it. Just proceed with the examination.

Mr. Hitz: And could I continue to answer his—?

The Court: I think you have answered it.

Mr. Hitz: Yes, sir.

By Mr. Hitz:

Q. Will you read on 1205 now, from Mrs. Funn, about the middle of the page,

"Did you attend,"

etc.

A. Yes, sir.

"Mr. Kunzig. Did you attend Communist Party meetings in Washington, D. C.?

"Mrs. Funn. I attended a few of those when I was in town.

"Mr. Kunzig. To your knowledge were the individuals attending those meetings members of the Communist Party?

"Mrs. Funn. Well, I must repeat again, any of these meetings, Communist Party meetings of a club or a group, [fol. 103] were attended only by members of the party. No outsiders were allowed into those meetings, and those that I attended of the group in Washington had to be members of the Communist Party.

"Mr. Kunzig. Well, now, you yourself, you said, were a legislative representative.

"Mrs. Funn. That is right.

"Mr. Kunzig. That is what is generally known, I believe, to the public, as a lobbyist. Would that be correct?

"Mrs. Funn. Yes, yes.

"Mr. Kunzig. Now, as a lobbyist, I presume you came in contact with other lobbyists.

"Mrs. Funn. I did.

"Mr. Kunzig. Did you come in contact—and I want you to think very seriously over this question—with any other legislative representatives or lobbyists whom you knew to be members of the Communist Party?

"Mrs. Funn. I came in contact with a great number of legislative representatives, some whom I found later were members of the party, because they met with me in the group in the Communist Party group there in Washington. There were regular meetings of the legislative representatives, regular Communist Party meetings of the legislative representatives in Washington.

[fol. 104] "Mr. Kunzig. You mean—?

"Mrs. Funn. Yes.

"Mr. Kunzig. I want to get that straight.

"Mrs. Funn. Yes.

"Mr. Kunzig. You mean the Communist Party held meetings of Communist Party members who were also legislative representatives,—

"Mrs. Funn. That is right.

"Mr. Kunzig. (Continuing)—and they met as Communist Party members together?

"Mrs. Funn. That is right.

"Mr. Kunzig. Now, were they furthering the cause of the groups they were representing in the legislature or were they attempting to further the cause of the Communist Party?

"Mrs. Funn. Well, I might say in all Communist Party meetings the basic idea was to give full attention and study to Marxism, Leninism, and furthering the cause of the revolution.

"Mr. Kunzig. Well, now, Mrs. Funn, —

"Mrs. Funn. You see, come the revolution, some of them were going to be commissars of this, that or the other thing. That is a quote.

"Mr. Velde. May I ask Mrs. Funn whether these people were registered as lobbyists, any of them?

[fol. 105] "Mrs. Funn. No, I don't. At that time, this was —there was no law to that effect. This was back in 1933, 1934,—

"Mr. Velde. I see.

"Mrs. Funn. —1935. And they were the legislative representatives of their duly constituted organizations, whether it was the United Auto Workers or the Food and Tobacco Workers or the Maritime Union or the International Longshoremen and Warehousemen's Union—those types of organizations plus others like the National Negro Congress

and National Federation for Constitutional Liberties. That is the way it was. But there was no registration."

Q. All right, sir, I think we can omit until a passage on 1208 of the same testimony, Mr. Tavenner. Will you pick up about the middle of the page, where Mr. Kunzig said:

"Did you know Russell Nixon?"

A. Yes. After having identified some of the members of this group, the following questions were asked and answers given:

"Mr. Kunzig. Did you know a Russell A. Nixon?

"Mrs. Funn. Yes, I knew him. He was originally with the, I think he was originally with the CIO, but I know he joined the United Electrical, Radio and Machine Workers [fol. 106] of America as their representative.

"Mr. Kunzig. Did you know him to be a member of the Communist Party?

"Mrs. Funn. He met with the group.

"Mr. Kunzig. Could you keep your voice up, Mrs. Funn.

"Mrs. Funn. I'm sorry.

"Mr. Kunzig. I know it is difficult,—

"Mrs. Funn. Yes.

"Mr. Kunzig. (Continuing)—but if you will speak as clearly as you can.

"Mrs. Funn. Yes.

"Mr. Clardy. I would like to ask you a question there. You said he met with the group. I think counsel's question was, did you know Nixon as a member of the Communist Party.

"Mrs. Funn. Yes, that is the answer.

"Mr. Kunzig. I think, sir, it is already on the record that all of those people who met with this group, as I understand it,—

"Mrs. Funn. That is right.

"Mr. Kunzig. (Continuing)—were members of the party. Is that correct?

"Mrs. Funn. I tried to make that very clear, that no one who was not a member of the party could attend these [fol. 107] specific meetings.

"Mr. Kunzig. So that any other names you mention from now on that met with you in the group, you mean are members?

"Mrs. Funn. Are members.

"Mr. Kunzig. Or you know them as members of the Communist Party?

"Mrs. Funn. As members of the Communist Party; that is correct.

"Mr. Velde. In what capacity was Mr. Nixon acting?

"Mrs. Funn. Legislative representative of the United Electrical Radio and Machine Workers of America.

"Mr. Carney. He still is, isn't he?

"Mrs. Funn. I don't know."

Q. Thank you, sir.

Now, Mr. Kunzig, with further reference—

A. Tavenner.

Q. —or Mr. Tavenner, with further reference to Mr. Nixon's pertinency, would you turn to the hearings entitled, "Fort Wayne, Indiana,"—

Mr. Hitz: —which is, You Honor, Government No. 8 in evidence.

By Mr. Hitz:

Q. (Continuing) Do you have a copy of that, sir?

[fol. 108] A. Yes, sir.

Q. And turn to page 139. Now, that, the testimony that is on page 139 of the Fort Wayne hearings, which is Government 8, is the testimony of Mr. Gojack, is it not, sir,—

A. Yes, sir.

Q. —in question here at this trial?

Now, on page 139,—

Mr. Hitz: Does Your Honor have a copy of this?

The Court: Yes.

By Mr. Hitz:

Q. On page 139, there is a quotation from a letter which is purported to be signed, "Russ Nixon." Would you please be good enough to tell us the background of that letter so far as the committee is concerned, whether you had it before Mr. Gojack testified, and where it was received from, in a general way?

A. The committee had procured from a police agency the letter referred to, written by Mr. Nixon, addressed to John Gojack, John T. Gojack, attached to which was an enclosure referred to in that letter, which emanated from France.

Q. All right, sir.

Mr. Hitz: You Honor, perhaps it would be well for me to explain what I propose to do next. Although this letter, in [fol. 109] the passage that I have referred the witness to, on page 139, is part of the hearings at which Mr. Gojack testified, and is already in evidence, it is not a portion of the hearings that we propose to read in full. We propose, with very few exceptions, which will have largely to do with quorum, the presence of a quorum, we intend to read from the report which is excerpts from th same testimony. However, since we are now on the subject of proving up the pertinency of our various questions, I thought that we might digress for a moment, or continue to digress in the same direction of proving pertinency, so as to read that portion of the hearings that we don't intend later to read for this purpose, so that we are going a little bit out of time for the moment, but I think it would be helpful to do so at this time, because we will not read it from the report, because it isn't there.

PORTIONS OF TESTIMONY OF JOHN T. GOJACK READ INTO RECORD.

By Mr. Hitz:

Q. Would you be good enough, Mr. Tavenner, to read that portion of the testimony of Mr. Gojack and your questioning of him that concerns this letter from Nixon to Gojack, reading the letter, and the letter from Paris, France, as well, and tell us where you are reading from?

A. Yes, sir. I believe if you begin at the first question asked at the bottom—the last question asked at the bottom of page 138,—

[fol. 110] Q. All right, sir.

A. "Mr. Tavenner. I was asking you about Mr. Russell Nixon. Did he attend the executive board meetings that you said you attended in March 1951 and in December or January preceding?

"Mr. Gojack. I don't recall, sir. I would like to explain that as legislative representative of our union, we invited Mr. Nixon upon occasion to address district council meetings. He never attended a district board meeting, but he

might have attended a district council meeting. Whether or not he was there that year, I don't recall.

"Mr. Tavenner. I hand you a letter bearing date of March 27, 1951, on the stationery of United Electrical, Radio and Machine Workers of America, addressed to Mr. John T. Gojack, and over the signature of Russ Nixon. Will you examine it, please, and state whether or not you recall having received it?

"Mr. Gojack. Now that you show me this letter, I recall having received some such letter from Brother Nixon.

"Mr. Tavenner. Will you read it into the record, please?

"Mr. Gojack. (Reading)

[fol. 111] "'Last week we received, addressed to the International Union, a letter from the Metal Workers Union officials in Paris, copy of translation of which is attached.

"'Although I have not had a chance to talk with anyone here in the international union about this, since this is a general communication and you indicated an interest in some such contacts at the last general executive board meeting, I am informally sending this to you for whatever consideration you think it might justify in your district.

"'Fraternally yours,

"'Russ Nixon.'

"Mr. Tavenner. You have previously told us that you had no interest whatever in the Metal Workers Trade Union of Paris and had no desire to make any contact with that organization. Will you explain that testimony in light of the statement by Mr. Nixon that you had at the very previous meeting of the executive board indicated such an interest?

"Mr. Gojack. Yes, I will be glad to, sir. The interest I indicated at the January executive board meeting was not with reference to contacting the Metal Workers Union officials in Paris or any other specific organization. As I recall, some time prior to then we had discussed on a num-[fol. 112] ber of occasions the possibility of officers of our union—at one time I remember strongly advocating that the president of our union take a trip to Europe and that we see for ourselves what was happening over there in the trade-union movement, because we had been getting reports from other trade unionists, from people who were sent over there by the State Department, and I specifically remember

posing the question that we ought to have some of our own officials go over to get firsthand reports on what was happening.

"Mr. Tavenner. Is that the reason you were applying for a passport to go to Europe?

"Mr. Gojack. No. As a matter of fact, I advocated in our general executive board that we establish contacts with unions with whom we had relations. I gave the examples that I recalled here, Wayne Pump and Burroughs Adding Machine, having plants. I remember as a result of my discussion in the general executive board meeting, for example, sir, that one of the other general vice presidents gave me the address of a union in England from which I could get some information on the Burroughs Adding Machine Co. there, some wage-rate information which we could use in our organizing efforts in the Detroit plant of Burroughs which was then and is today unorganized. I have been a [fol. 113] strong advocate of this; and I remember also distinctly that in the course of one of these discussions at our general executive board meeting, having a clipping from either the Wall Street Journal or the New York Times from some official in General Motors or Ford, one of the bigger auto firms, suggesting that a way to ease the cold war might be an exchange, a broad exchange of many people between here and Europe—

"Mr. Tavenner. And you desired to make an exchange with the Metal Workers Union, a trade union, in Paris?

"Mr. Gojack. Not specifically; no. Just the general question of international trade unions.

"Mr. Tavenner. Mr. Nixon says it is a matter you were interested in and had inquired about, and he thought it important to send you a document from that organization. Doesn't that mean that you were interested in exchange with that very organization?

"Mr. Gojack No; it means nothing of the sort. As a matter of fact, he says in this letter that since this is a general communication—

"Mr. Tavenner. A general communication from the Metal Workers Trade Union.

"Mr. Gojack. Right. I indicated an interest in some such contacts, plural. I don't recall any inference here that I was [fol. 114] seeking contact with the Metal Workers Union

but, quite the opposite, contacts with any possible union, all possible unions.

"Mr. Tavenner. It was a trade union which you knew to be a Communist outfit, didn't you?

"Mr. Gojack. Which union?

"Mr. Tavenner. The Metal Workers Trade Union.

"Mr. Scherer. Of Paris.

"Mr. Gojack. I don't know what it is today, to be very honest about it. I don't know what it is.

"Mr. Tavenner. You read the document that Mr. Nixon sent you, didn't you?

"Mr. Gojack. I believe I did, but I haven't the slightest recollection of what it was.

"Mr. Tavenner. I am going to give it to you in a moment and ask you whether or not, in your judgment, it is a communist document.

"Mr. Gojack. I will be happy to read it, sir.

"Mr. Tavenner. Will you examine the letter again and see whether or not the letter sent you was a copy made by Mr. Nixon in which your address is filled in in original type?

"Mr. Gojack. Yes, sir.

"Mr. Tavenner. What does that indicate to you?

"Mr. Gojack. It indicates clearly to me that this com-
[fol. 115] munication was sent to a number of other people, also.

"Mr. Tavenner. Do you know how many vice presidents of your organization received a copy of that letter?

"Mr. Gojack. I haven't the slightest, sir. Very frequently, Brother Nixon sends information that comes across his desk in New York or here in Washington, to all of the district presidents. It has been a custom of his down through the years. We get detailed information from him that it isn't practical to send out to every local union. It is sent to the district offices.

"Mr. Tavenner. Do you recall more definitely now about the subject of conversation in your executive board meeting that Mr. Nixon is referring to in that letter when you said you were interested in similar contacts?

"Mr. Gojack. He uses the language 'some such contacts.' I testified here, and I will repeat, that I raised this question in many board meetings, and I would like to consider

myself a champion of the cause for greater exchange between people throughout the world. I think it would help to bring about a little more stable peace if the common people of the various countries would get together a little more than they do.

[fol. 116] "We may learn something about them, and they may learn something about us.

"Mr. Scherer. In view of these letters and the subsequent testimony, Witness, do you say that your contemplated trip to Europe, for which you were denied a passport, was still a pleasure trip, a vacation?

"Mr. Gojack. Mr. Scherer, this communication was in March of 1951, and I would respectfully suggest that I—

"Mr. Scherer. You can say it was not. You can say no.

"Mr. Gojack. No, it has no connection. I will explain why. I can show you communications from all kinds of unions all over, in any given year that you want to. We don't keep a file of all of them. We keep a file of some of them. To suggest the communication of March 27 has some relationship to my deciding in December or November that I wanted to take a vacation, and to imply somethig evil, I think is stretching the point.

"Mr. Doyle. Was it not about this time that you were approaching the State Department? What months were you at the State Department?

"Mr. Tavenner. 1952.

"Mr. Doyle. 1952, a year later.

[fol. 117] "Mr. Moulder. Let's proceed and hurry along as expeditiously as possible.

"Mr. Tavenner. I desire to offer Mr. Nixon's letter in evidence, and ask that it be marked 'Gojack Exhibit No. 8,' for identification purposes only, and to be made a part of the committee files.

"Mr. Moulder. It is so ordered.

"Mr. Tavenner. Attached to the letter which has been introduced in evidence is the following enclosure. In parentheses there appears at the top:

"'Following is translation of a letter received by UE International Office from French trade unionists in the metal manufacturing field:

"'Paris, February 9, 1951.

"'Dear Brother: I am sending you attached a copy of a letter sent on to the smelter workers which was sent by the Paris metalworkers to their American brothers.

"'I ask you to do all you can to make this letter known to the American metalworkers in order to rebuild the lines of international solidarity between the workers of our two countries.

"'You have, dear brother, our fraternal greetings,

"'H. Jourdain.'

[fol. 118] "And here is the letter:

"'Paris, February 9, 1951.

"'Paris Metal Workers to American Metal Workers.

"'Dear Brothers: Meeting in conference on February 3 and 4, 1951, the Paris metal workers send you their fraternal and friendly greetings.

"'They request that you be the bearer of their sentiments to all the metalworkers in New York.

"'At this time when the capitalists wish to push the people into a new war, the Parisian metalworkers address themselves to their American brothers and call upon them to lead together the struggle against the warmakers.

"'They have learned with pleasure that their American brothers in the electrical workers union are leading, like themselves, the same battle for peace and well-being.

"'The Parisian metalworkers who have known on their own soil 3 wars in 75 years and the consequences which have resulted from these wars, the millions of dead, injured, widows and orphans, the piles of ruins which are not yet cleaned up, know well all the consequences which the policy of war threatens to their country.

"'The increase in taxes, high cost of living, depression, [fol. 119] freezing of wages, increased speedup, poverty, are already for them (the Parisian metalworkers) the consequences of this policy.

"'The Parisian metalworkers know that like themselves, the American metalworkers are profoundly devoted to peace and do not confuse them with their capitalist government.

"'The Parisian metalworkers remember the tremendous sacrifices of the Soviet Union in the struggle against Hit-

lerism and are in agreement with the peaceful propositions formulated by her at Lake Success.

" 'Conscious that the forces of peace are the strongest in the world, forces of which a part is the Soviet Union and the popular democracies as well as the people of the capitalist countries and the colonial countries, the Parisian metalworkers know that the war is not inevitable, that one can and one must prevent it.

" 'The millions of signatures received by the Stockholm appeal condemning atomic arms have shown everyone the strength which is represented by the people desiring peace.

" 'American metalworkers, the millionaires that make of your country an immense arsenal, source of materials of war, of death, would make of you the accomplices of their crime and the associates of the Nazis whom you have fought [fol. 120] with us.

" 'The Parisian metalworkers struggle with all their strength against the preparations for war, against the warmakers, against the rearmament of Germany, for the ending of the war in Vietnam and the return of the expeditionary corps as you fight for the return to the United States of the American Army in Korea.

" 'The Parisian metalworkers associate themselves with the grief and suffering of the American mothers whose children are dead in Korea, and will struggle with all their force in order that their country will not know the horrors which those valorous people now struggling for their independence know (in Korea). Pleven, provisional chief of the Government of France, in the course of his conversations with Truman, conspired behind our backs the stepping up of the preparations of war and the increasing of the policy of poverty which expresses itself already amongst us by the wage freeze.

" 'No people threaten peace, it is why the Parisian metalworkers call you over the frontiers to make, with them and the other workers of the world, the call for peace.

" 'General Eisenhower, whom the Parisian people have [fol. 121] applauded in 1944 with the Allied armies having struggled against Hitlerism, has received in 1951, in our capital an entirely different welcome. The people of Paris do not want the rearmament of Germany nor an Atlantic army, nor a foreign commander in chief. It is why they have said to Eisenhower, "Go home and stay there."

"'In the other capitals of Europe the reception of the people was the same.

"'Brother American metalworkers, those of you who wish peace as we do from the depths of your heart, the security of your firesides, who do not wish to know on your land the horrors of war which we have known, let us establish amongst us the lines of brotherhood and comradeship—'

"'and comradeship' is stricken out—

"'let us exchange experiences, let us learn to know each other better, let us unite our efforts in order to put a stop to the policy of war and poverty of our respective governments.

"'Brother American metalworkers, the Paris metalworkers send you their fraternal trade-union greetings.

"'For the Conference.

"'The Secretariat of the Seine Metal Workers Union.

[fol. 122] "'Andre Lunet,

"'Secretaire General.'

"And the names of eight other members of the union.

"That is the document which Mr. Nixon transmitted to you and, as you say, no doubt to other vice presidents of your districts. Have you read any stronger propaganda document emanating from abroad than that, contrary to and against the interests of this country and the foreign policy of this country?

"Mr. Gojack. Have I read any stronger?

"Mr. Tavenner. Yes. Do you know of any document emanating from abroad of a more propagandist nature than that document?

"Mr. Gojack. The most accurate answer I can give to that is, of course, in the New York Times I read the debates of people in the United Nations, and I read stronger denunciations of our foreign policy than that in some of the speeches in the U. N.

"Mr. Tavenner. Is there any doubt in your mind now, after having heard that letter read, as to the Communist character of the organization known as the Seine Metal Workers Union or the Metal Workers Union of Paris?

"Mr. Gojack. Sir, I couldn't answer that question with a [fol. 123] simple 'Yes' or 'No' answer, for the reason that, as I testified earlier, I don't know what the organization is. I don't know whether it is a Catholic union, a Communist

union, or the so-called third force that they have there. There are things in there, for example, that Eisenhower got elected on. He got elected—at least he got the votes out our way based upon his strong stand against the Korean war.

"Mr. Tavenner. Do you support the statement contained in that letter?

"Mr. Gojack. Sir, I couldn't say that I support the statements in this letter, because there is general language in here, there are things in here like the reference to increase in taxes and the high cost of living and the freezing of wages—

"Mr. Tavenner. What about the Stockholm peace appeal?

"Mr. Gojack. I don't know anything about the Stockholm peace appeal, sir.

"Mr. Tavenner. You never participated in that?

"Mr. Gojack. I don't know anything about it. I know it has been condemned.

"Mr. Tavenner. Did you engage in the movement to bring the troops back from Korea?

[fol. 124] "Mr. Gojack. Did I engage in the movement?

"Mr. Tavenner. Yes. Did you advocate it?

"Mr. Gojack. Oh, long before a lot of other people said that the Korean war was an error and that other things should have been done about it, I spoke out for peace and against useless killing. I believe strongly that that particular war, as it was settled ultimately by negotiations, should have been averted, if necessary by the same techniques.

"I am against war. I am for peace. Is it a crime to be for peace in this country?"

Q. Mr. Tavenner, thank you. I think that is enough of it.

Mr. Hitz: Your Honor, if counsel for Gojack care to have any more read for the sake of continuity, I will be happy to do that, and it might make a better record. If not, we will conclude at this point. I hear no questions.

By Mr. Hitz:

Q. Mr. Tavenner,—

Mr. Hitz: I think, Your Honor, it might be well for me to state that we are now moving from proof of pertinency

to proof of the actual contempt on the dates alleged in the indictment.

By Mr. Hitz:

Q. Mr. Tavenner, will you refer to Government 5, which [fol. 125] is the report of the committee, No. 1406, to the full House of Representatives?

A. Yes, sir.

Q. Does that report contain—

Mr. Donner: That is 4, isn't it?

Mr. Hitz: I beg your pardon.

Mr. Donner: 4 or 5?

Mr. Hitz: Let's see. It is 4. Thank you, Mr. Donner. Government No. 4.

By Mr. Hitz:

Q. That report sets forth, does it not, sir, word for word, excerpts from the testimony of Mr. Gojack before the Un-American Activities Committee on February 28 and March 1, 1955?

A. Yes, sir.

Mr. Donner: Before that, are you going to have Mr. Tavenner read this, sir?

Mr. Hitz: Yes.

Mr. Donner: Would you interpolate the additions that we agreed on?

Mr. Hitz: Yes, be glad to.

Mr. Donner: Very well.

By Mr. Hitz:

Q. There is a little bit, Mr. Tavenner, that we want in evidence here which is not contained in the report, but is [fol. 126] part of the full hearings from which you have recently been reading, being Government No. 8. Will you turn to page 19 of Government 8 and tell us if that is the commencement of the hearings at which Mr. Gojack subsequently testified?

A. Yes, sir, it is.

Q. And they were held on what day and at what place?

A. February 28, 1955, in the Old House Office Building, House of Representatives.

Q. In the city, sir?

A. In Washington, D. C.

Q. Now would you be good enough to read page 19, and on page 20 until I ask you to stop?

A. Yes, sir.

"PUBLIC HEARING

"The subcommittee of the Committee on Un-American Activities met, pursuant to notice, at 10:20 a.m., in the caucus room, 362, Old House Office Building, Washington, D. C., Hon. Morgan M. Moulder (chairman) presiding.

"Committee members present: Representatives Morgan M. Moulder (chairman), Clyde Doyle, and Gordon H. Scherer.

"Staff members present: Frank S. Tavenner, Jr., counsel; Donald T. Appell, investigator; and Thomas W. Beale, Sr., [fol. 127] chief clerk.

"Mr. Moulder. The committee will be in order.

"This subcommittee was appointed pursuant to the rules of the House as ordered by Francis E. Walter, chairman of the full committee, and it is composed of three members, the Hon. Clyde Doyle of California, on my right, the Hon. Gordon H. Scherer, of Ohio, and myself as chairman of the subcommittee. Mr. Scherer, of Ohio, is absent and will be present within the next few minutes.

"There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda.

"We had expected to hear at this time the testimony of David Mates, an international representative of the United Electrical, Radio and Machine Workers of America. His appearance before this committee was continued twice at his own request. At this time the inability of the United States marshal to effect service of process strongly indicates an effort on the part of Mr. Mates to evade service. This matter will be investigated and, if the facts warrant, the House of Representatives will be requested to cause the issuance of a warrant for his arrest and production before [fol. 128] this committee as a witness.

"In the course of the investigation conducted by this committee at Dayton in September 1954, information was ob-

tained indicating that one or more of the witnesses to be heard today should have firsthand knowledge of Communist Party activities in the area of Dayton and elsewhere.

"Mr. Tavenner, are you ready to proceed?

"Mr. Tavenner. Yes, sir.

"Mr. Moulder. Call your first witness.

"Mr. Tavenner. Julia Jacobs, will you come forward, please?

"Mr. Donner. My name is Frank Donner. I am counsel for Miss Jacobs and two other witnesses who have been subpoenaed today. Before Miss Jacobs is sworn in, may I file with the committee for incorporation in the record a motion addressed as to the jurisdiction of the committee to proceed.

"Mr. Moulder. You may file the motion; and then whatever action the committee desires to take upon it, we will take.

"Mr. Donner. Will it be physically incorporated in the record, sir?

"Mr. Moulder. We will decide that question after we [fol. 129] have examined the motion.

"Mr. Donner. I will file two copies with the committee.

"Mr. Moulder. Let the record show that the motion by counsel is duly filed."

Q. That is enough, thank you, sir.

In 1955, the month of February, was there any House of Representatives rule upon the number of persons that shall comprise a subcommittee of a committee of Congress?

A. No, sir.

Q. What rule, if any, did the committee have with respect to what number should comprise a subcommittee?

A. The practice and rule of the Committee on Un-American Activities was that a subcommittee should consist of three members, any two of whom would constitute a quorum.

Q. For taking testimony?

A. Yes.

Q. All right, sir.

Now, as you have indicated, this hearing at which Mr. Gojack appeared on February 28 commenced at 10:20, with the testimony of Miss Jacobs; correct?

A. Yes, sir.

Q. Will you now turn to page 43 and tell me whether at noontime the committee recessed for noon?

A. Yes, sir, it did.

[fol. 130] Q. And did they reconvene again that same afternoon?

A. Yes, sir.

Q. With what members of the committee present?

A. The same members of the same subcommittee: Mr. Morgan M. Moulder, Clyde Doyle, and Gordon H. Scherer.

Q. All three of them?

A. Yes, sir.

Q. And then did you resume with Miss Jacobs' testimony?

A. Yes, sir.

Q. Did that continue until page 71 of this print?

A. Yes, sir.

Q. At which time Mr. Gojack was called?

A. That is correct.

Q. Did the same three members of the subcommittee continue to sit?

A. Yes, sir.

Q. Were they sitting when Mr. Gojack commenced his testimony?

A. Yes, sir.

Q. Did they sit throughout?

A. Yes, sir, except for one or two short periods indicated in the record, when Mr. Doyle was late in arriving at one session. I believe the next day, the record shows that a few minutes later he came in. That was the only occasion.

[fol. 131] Q. And you are now answering with respect to not only February 28 but March 1, are you, sir?

A. Yes, sir.

Q. That is, both days of Mr. Gojack's testimony?

A. Yes, sir.

Q. Yes. And at any time did Mr. Gojack or his counsel make any objection to the composition or to the number of the members of the subcommittee present?

A. No, sir.

PORTIONS OF TESTIMONY OF JOHN T. GOJACK READ INTO RECORD.

Q. Now would you turn to the report, which is Government 4, Mr. Tavenner, and would you be good enough to turn to page 3 of the report, and commence to read at the top, the testimony beginning with Mr. Moulder's statement of "Call your next witness." Will you commence reading there, please.

A. Yes, sir.

"Mr. Moulder. Call your next witness.

"Mr. Tavenner. Mr. John T. Gojack, will you come forward, please, sir.

"Mr. Moulder. Hold up your right hand and be sworn. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

"Mr. Gojack. I do.

[fol. 132] "TESTIMONY OF JOHN THOMAS GOJACK, ACCOMPANIED BY COUNSEL, FRANK DONNER

"Mr. Moulder. Are you accompanied by counsel?

"Mr. Gojack. Yes.

"Mr. Moulder. Counsel, state your name.

"Mr. Donner. My name is Frank Donner, 342 Madison Avenue, New York City.

"Mr. Tavenner. Please state your name.

"Mr. Gojack. John Thomas Gojack.

"* * * * * * *"

"Mr. Tavenner. When and where were you born, Mr. Gojack?

"Mr. Gojack. I was born in Dayton, Ohio, August 15, 1916."

I think I should have noted that there is an omission between the last question asked and the question before.

Q. Yes, I think that would be helpful if you would do it each time.

A. "Mr. Tavenner. Where do you now reside?

"Mr. Gojack. I reside in Fort Wayne, Indiana.

"Mr. Tavenner. What is your address in Fort Wayne?

"Mr. Gojack. My address is 2303 Florida Drive.

"* * * * * * *"

Q. May I interrupt, Mr. Tavenner.

[fol. 133] Mr. Hitz: I wonder, Your Honor, if you would consider it in order to ask the stenographer, when she writes this case up, to note that there have been omissions which can be seen from the report which I can give her, and I think it will make a more accurate record; that is, transcribed. Will that be an appropriate —— ?

The Court: Any objection?

Mr. Donner: I am very sorry, Your Honor. I didn't hear. I apologize. I should have been listening more carefully, but I was consulting with counsel about another point.

Would you mind repeating what you said?

Mr. Hitz: I was asking the Court if it would be appropriate for him to request the reporter, when she writes up the testimony that is being read, to note asterisks where there are omissions, because it would make a more accurate and complete record.

Mr. Donner: I would have no objection.

Mr. Hitz: Thank you.

The Court: Very well.

By Mr. Hitz:

Q. Now, sir, there is an omission, is there, after Gojack's statement of his address? and then continue.

A. Yes, sir.

"Mr. Tavenner. Will you tell the committee, please, what [fol. 134] your present occupation is?

"Mr. Gojack. My present occupation is in the capacity as general vice president and district president of the United Electrical, Radio, and Machine Workers of America, union organization that your chairman announced in the press he was out to put out of business. That is part of the reason why I think this whole investigation is a union-busting venture and not legitimate investigation.

"Mr. Tavenner. Are you an officer of district No. 9?

"Mr. Gojack. Yes.

"Mr. Tavenner. What is that office?

"Mr. Gojack. I stated in answer to your first question, president of district 9.

"Mr. Tavenner. A district president. You didn't state what district.

"Mr. Gojack. I happen to be elected president of district council 9.

"Mr. Tavenner. * * * Will you tell the committee, please, what your formal educational training has been?

"Mr. Gojack. Well, my formal education consists of 7 years in parochial and public schools and if you want to include other educational experiences, I will be glad to recite [fol. 135] them.

"Mr. Tavenner. I am speaking of your formal educational training. That was the question. Did you attend any other schools besides those that have been mentioned?

"Mr. Gojack. I believe I went to school when I was in the Army some years ago, and I consider my 16 years in the labor movement somewhat of a schooling.

"* * * * * * *"

Note asterisks.

"Mr. Tavenner. Now, will you proceed, please, to give us your employment after August 1940, beginning with August 1940?

"Mr. Gojack. In 1940 while still unemployed at Delco Products, but working for the union to get this plant organized, I was given a job as a field organizer for the United Electrical, Radio and Machine Workers of America. I worked as a field organizer with——

"Mr. Tavenner. Did that begin August 1940?

"Mr. Gojack. August 1, 1940, if I remember correctly, yes, sir.

"Mr. Tavenner. You had no prior employment by UE? You went there directly from the Delco Products Co.?

"Mr. Gojack. As a matter of fact, I was currently unemployed, I was on layoff from Delco. Because I was one of the few workers who would get out at the plant and put [fol. 136] out leaflets when the rest of the workers were totally fearful of doing this because of the wrath of General Motors, I was engaged to work as an organizer. They felt I had some courage in facing this giant corporation who had sought to keep a union out of its plant.

"Mr. Tavenner. When was Delco organized?

"Mr. Gojack. It was organized in 1940 in December. The election was held in January, if I remember. I had been working voluntarily for the local and as I applied earlier I

received some very modest amounts money for organizing the handbill distribution and participating in handbilling.

"If I remember correctly, at one point when they couldn't get workers to do it because of the fear of the corporation, they hired Western Union boys and I offered to work for the same money as Western Union boys because I needed funds to supplement my WPA.

"Mr. Tavenner. Will you continue with your employment by UE beginning August 1, 1940, and the various positions held by you in that organization from that time to the present?

"Mr. Gojack. As I said earlier, I was engaged as a field organizer for that union about August 1, 1940. Sometime in 1942, I don't recall the exact date, I think the fall of [fol. 137] 1942—I would have to check the records to get the exact date—the executive board of district counsel 9 in the Fort Wayne area where I had by that time been sent by the national union, hired, asked the international union to give me a leave of absence to hire me as business representative of the district council because of my experience in negotiation. At that point I went off the payroll of the national union and went to work as an employee of district council 9.

"* * * * * * *"

Note asterisks.

"Mr. Tavenner. Let's go back again to the period that you were employed by the UE. The last that you told us was that in 1942 you were hired as business agent by the executive board of district No. 9. How long did you serve in that capacity?

"Mr. Gojack. Until the fall of 1943 at which time I was elected president of district council 9, if I remember correctly.

"Mr. Tavenner. How long did you remain president of district 9, the council of district 9?

"Mr. Gojack I have been elected annually, reelected annually, for every year since that time on a number of occasions in contested elections, with opponents, but I received the majority vote in our district council meeting in which [fol. 138] the elections take place annually, in the fall.

"Mr. Tavenner. Do you still hold that position?

"Mr. Gojack. Yes, the last reelection was in the fall of 1954.

"Mr. Tavenner. What other positions have you held in the union besides the ones you have told us of?

"Mr. Gojack. According to the constitution of our union, by virtue of that office of district council president, I am automatically a general vice president of the national union and a member of the general executive board. And I have held that office concurrent with the district council position in accordance with the constitution of our organization.

"Mr. Tavenner. I think now I shall ask the question that the Congressman asked you a few moments ago: Have you been a member of the Communist Party at any time while occupying any of the positions you have enumerated in the union?

"Mr. Gojack. In 1949 and 1950 and 1951 and 1952 and 1953 and 1954, on August 24, 1954, I signed an affidavit which said:

"'I am a responsible officer of the union named below, the UE. I am not a member of the Communist Party or affiliated with such party, I do not believe in—'"

[fol. 139] Mr. Rein: If Your Honor please, I wonder if I could interrupt and approach the bench a moment.

The Court: Yes.

Mr. Rein: Perhaps it is not necessary to approach the bench, Your Honor, but I would like to make a request, and I don't know what Mr. Hitz's position is. We have subpoenaed a witness in our case who is a newspaper man, who will be a very short witness. He called me today and told me that his wife is in the hospital, expecting a baby momentarily.

I was wondering whether it would be at all possible to take him out of order. I know it is unusual, but this is a nonjury case. I think all the evidence will be in at the same time.

The Court: Is he here now?

Mr. Rein: He is here now. He has just come in, and if he can be accommodated at all— I don't know what Mr. Hitz's view is.

The Court: Do you object?

Mr. Hitz: Not at all. Be glad to.

The Court: Very well.

You step down, Mr. Tavenner, and suspend your testimony.

But you might let him finish that sentence.

Mr. Rein: Surely.

A. (Continuing) "'—that believes in or teaches the over-[fol. 140] throw of the United States Government by force or by any illegal or unconstitutional methods.'"

The Court: Very well.

(The witness left the stand.)

The Court: Now you may offer the witness.

Mr. Donner: Mr. Thompson.

Thereupon, ROBERT ELLIOTT THOMPSON, was called as a witness by counsel for the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Donner:

Q. What is your full name, please?

A. Robert Elliott Thompson.

Q. What is your address?

A. 7305 Keene Mill Road, Springfield, Virginia.

Q. What is your occupation, Mr. Thompson?

A. I am a reporter for International News Service.

Q. Do you work for any other press service aside from International News Service?

A. No, I don't.

Q. Do you work for any individual papers?

A. No, I don't.

Q. Did you, in your official capacity, ever attend a [fol. 141] meeting in the office of Chairman Walter of the House Un-American Activities Committee?

A. Not in the office of Chairman Walter.

Q. Did you attend a meeting in the House Un-American Activities office?

A. Yes.

Q. When was that meeting, approximately?

A. February 14, 1955.

Q. How did you come to attend that meeting?

A. As I recall, there were either one or two other reporters than myself who normally covered the committee, knew that this case was coming up, and we—

Q. What case?

A. The IUE case, the investigation of the leadership of the union.

Q. Including Mr. Gojack?

A. Well, I don't recall whether we knew Mr. Gojack's name at the time. I don't believe so, because I knew of Mr. Gojack, having worked in Fort Wayne some time ago, and I don't think that at the time of the meeting I knew that Mr. Gojack was going to be a witness. I can't recall that I did.

Q. But you knew that there was an investigation pending of certain UE officials; is that right?

A. That is correct.

Q. Now proceed. How did you come to attend the [fol. 142] meeting?

A. We met Mr. Walter that morning as he was going into the meeting, and we asked him if we could cover the meeting, if it would be open. As I recall, he said certainly, he would like to have the meeting open to the press, and so we went into the small office, small committee room, and Mr. Goldstein, I believe, was in there.

Q. Who was Mr. Goldstein?

A. He was the Washington representative for the union.

Q. As a result of your session on February 14, did you write a story covering the events which transpired there?

A. Yes, sir.

Q. Did you file the story?

A. Yes, sir.

Q. Do you have a copy of the story which you filed?

A. Yes. (Producing paper) I couldn't say that it is exactly verbatim, but it would be very close.

Mr. Donner: May this be marked, Your Honor.

(Paper referred to was marked as Defendant's Exhibit No. 1 for identification.)

The Deputy Clerk: Defendant's Exhibit No. 1 for identification.

By Mr. Donner:

[fol. 143] Q. Now, I show you Defendant's Exhibit 1 for identification. When did you write that story?

A. On February 14, 1955.

Q. Sometime after the hearing?

A. Yes, sir.

Q. Shortly after the hearing?

A. Yes, sir. As I recall, it was a very brief session, so it would have been in the morning.

Q. And you wrote what transpired at the hearing; is that correct?

A. Yes, sir, except I wouldn't call it a hearing. It wasn't a hearing,—

Q. A session?

A. —as such. Yes.

Offer in Evidence

Mr. Donner: I offer this, Your Honor. (Handing paper to Mr. Hitz)

Mr. Donner: Would you mark this.

(Newspaper clipping referred to was marked as Defendant's Exhibit No. 2 for identification.)

The Deputy Clerk: Defendant's Exhibit No. 2 for identification.

Mr. Hitz: We object to it, Your Honor. (Handing paper up to Court) We object to it as being hearsay. We object to it as violating what has become established for this trial as the best evidence rule. The Government has been required [fol. 144] in all instances to read a record where there is a record.

The Court: Well, you may inquire whether there is a record.

Mr. Donner: Your Honor, I—

The Court: And if there is no record, then of course he can give testimony of what he heard and saw. That would be the proper way of offering this evidence, rather than the story he wrote, which he filed with his employer. He may use the story to refresh his recollection, because it was made almost the same day, if he needs to use something to refresh his recollection.

Mr. Donner: Very well, Your Honor.

The Court: I understand that under those circumstances the Government has no objection.

Mr. Hitz: Oh, yes, Your Honor.

By Mr. Donner:

Q. Can you tell us, using this Defendant's Exhibit—

The Court: First find out whether he needs to use it to refresh his recollection.

Mr. Donner: Very well.

The Court: Or rather, first find out whether there was any reported transcript, if he knows.

By Mr. Donner:

Q. Do you know whether there was reported transcript taken of the hearing?

[fol. 145] A. I don't believe so, because I believe Mr. Goldstein objected to that and refused to speak for the record.

Q. Do you recall, yourself, what was said at the hearing?

Mr. Hitz: Your Honor,—

A. Only—

Mr. Hitz: Excuse me, sir.

I would like to object on the theory of the objections which have been made at this trial, which I don't think were well founded, but in any event—

The Court: Well, whether you think so or not, I ruled on them, Mr. Hitz.

Mr. Hitz: Well, I am sorry, but I thought Your Honor's ruling just now was that he should inquire first whether there was a record.

The Court: Well, he has inquired.

Mr. Hitz: But he hasn't asked me.

The Court: I didn't think he had to ask you.

Mr. Hitz: Well, this gentleman might not know. Mr. Tavenner would know. I do know.

Mr. Donner: Your Honor, may I just say this—

The Court: I will let you preliminarily cross-examine this witness if you desire to do that, after he is through with—

Mr. Hitz: I don't have any cross-examination, sir.

[fol. 146] The Court: You wanted to find out whether there is a record.

Mr. Hitz: No.

The Court: You may utilize the cross or not, just as you please.

Mr. Hitz: I know whether there is a record or not.

The Court: Do you want to take the stand and testify?

Mr. Hitz: No, Your Honor.

The Court: Very well.

Proceed, Mr. Donner.

By Mr. Donner:

Q. Now, Mr. Thompson, do you recall what took place at that hearing on February 14?

A. Only from refreshing my memory by reading—

Mr. Donner: May I show this to the witness to refresh his recollection?

The Court: Could you recall without refreshing your recollection, Mr. Witness?

The Witness: No, sir, I couldn't.

The Court: You may refresh your recollection, and after refreshing it, then the attorney will ask you certain questions.

(Paper handed to witness)

By Mr. Donner:

Q. Now can you tell us what did Chairman Walter say, [fol. 147] if anything, at this hearing?

Mr. Hitz: Excuse me, sir.

I would like to object, Your Honor, for the reason that he has not exhausted the possibility of a written record of this as the Government was required to do and produce it. We did produce it.

Mr. Donner: Your Honor, may I state our position on that? We know there is a written record, but the record is incomplete. We intend to offer the written record as well, but there is more to this hearing than went on in the written record.

The Court: Overruled.

By Mr. Donner:

Q. Will you now tell us, please.

A. Well, as well as I can recollect beyond the story, even, Mr. Goldstein was there, and when Mr. Goldstein saw that the press was present, and I don't recall whether there were two or three reporters, he objected, and he also objected to the stenotypist, and Mr. Walter said he would not hear anything Mr. Goldstein had to say unless it was on the record, because he had received this telegram from Mr. Gojack, in which he said Mr. Gojack had accused him of trying to bust the union. I don't remember, of course, exactly what the words were. There were some rather hot words between Mr. Goldstein and Mr. Walter and Mr. Moulder, another member of the committee, and as I recall, [fol. 148] Mr. Goldstein repeated Mr. Gojack's, or what Mr. Gojack supposedly said in the telegram—I don't believe I ever saw the telegram—that Mr. Walter was out to bust the union. Mr. Walter said, as I recall, that he certainly was out to bust this union. He said that he and other members of the committee had very good records on labor legislation supporting unions, but that they were out to get this union, because he said it was Communist-dominated and, as I recall, it was in a defense plant or a plant that had defense work.

Q. Now, do you recall whether Mr. Moulder said anything at this meeting?

A. Yes, sir. Mr. Moulder's statements were somewhat along the same line.

Q. Now I would like to show you Defendant's Exhibit 2 for identification. Can you tell us what that is?

Mr. Hitz: Excuse me, sir.

If he tells that, it won't need to be offered in evidence. I think it should be offered and then shown to me.

The Court: Well, he has a right to identify it.

Mr. Donner: That is all I am asking him to do.

The Court: He has asked him to state what it is. It appears to be a newspaper clipping. He may say it is a clipping of a story he wrote. I don't know. You are over[fol. 149] ruled, Mr. Hitz.

State what it is, but don't state its contents, Mr. Witness.

A. Well, it is a story that appears under my by-line in the Fort Wayne Journal-Gazette.

The Court: As a result of this story that you filed? or is this another?

The Witness: It is, as I can look at it generally, it is the same story, but it has been rewritten. It is not the same wordage, the same language.

By Mr. Donner:

Q. Do you know whether it reflects substantially what took place in the hearing?

The Court: I will sustain an objection to that.

Mr. Hitz: I don't object to that, Your Honor.

The Court: All right.

A. Yes, sir, I would say it does.

Mr. Donner: I offer it, Your Honor.

Mr. Hitz: I object to that. This is not even a story from a newspaperman initially written. This is a rewrite of the first story.

The Court: I sustain the objection.

Mr. Donner: Your Honor, may I indicate the purpose for which I offer it? I am offering it to show that it was published locally, that the content of the hearing was given [fol. 150] publicity, that it wasn't just something which took place in a private chamber, but that it was used to say certain things about the purpose of the hearing in public, and through a medium of public information.

The Court: Do you object to that?

Mr. Hitz: Yes, I do, Your Honor.

The Court: Sustained.

Mr. Donner: May it simply be marked, then?

The Court: Yes. It has been marked.

Mr. Donner: I have no further questions, Your Honor.

Mr. Hitz: Your Honor, in line with the Court's ruling, I would like to request that the testimony of this witness be stricken, for the reason that I have in my hand the record of that particular session. The day when counsel for the defendant Gojack first apprised me that there was such a hearing and that there was such a record made, they requested me to obtain a copy. The very same day that I was requested to get a copy for them to use, I got it, and I had

it available for them. They have seen it. They saw it last week. I told them that I would have it available for them to use at the trial. It is here.

I do not think that in that circumstance, in view of the requirements that were made of the Government, that we refer to all written records instead of a summary, that this witness' testimony should stand. I have the record, and I [fol. 151] offer it for any use the defendant may wish to make of it.

Mr. Donner: Your Honor,—

The Court: Mr. Hitz, the Court ruled yesterday, when you attempted to have the witness summarize something, that if you had the written testimony it should be used that way.

Mr. Hitz: Yes, Your Honor.

The Court: And it was used that way.

Now, in this case this witness, who does not have the written testimony, has given his recollection of what took place.

Your motion is denied. That is equally admissible.

Now, you, who have the written transcript, may offer it if you desire, and unless there is an objection, it will be received.

Cross-Examination.

By Mr. Hitz:

Q. Mr. Thompson, now I am going to read the record of the session about which you have given testimony. I would like for you to pay close attention to it, because when I am through I am going to ask you the question whether it is an accurate statement of the way you recollect the session proceeding.

First of all, were the members of the committee present Mr. Walter and Mr. Moulder and Mr. Doyle?

A. I don't recall Mr. Doyle was there, but then he could [fol. 152] have been and I just wouldn't remember. That's all.

Q. I see. Was Mr. Beale, the chief clerk of the committee, present?

A. Yes, sir. It was in his office, as I recall it.

Q. Yes.

I am going to ask you, when I finish reading, whether this occurred:

"Chairman Walter. The committee will be in order.

"STATEMENT OF GEORGE GOLDSTEIN, WASHINGTON REPRESENTATIVE OF UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE), 930 F ST., N.W., WASHINGTON, D. C.

"Chairman Walter. Will you raise your right hand and be sworn.

"Mr. Goldstein. No, I just wanted to see you.

"Chairman Walter. You told my secretary that you wanted to apply to have a hearing postponed because of an election in some way.

"Mr. Goldstein. I wanted to talk to you about that situation.

"Mr. Walter. I have no authority to do it, because this committee met and fixed the time and place of hearings. We are in the process of cleaning up old business, and among the things that we had unfinished was this man who did not come because of a doctor's certificate which he produced. [fol. 153] Now you want to have that hearing continued? It is a serious piece of business, because we have made arrangements to hold it."

Now, Mr. Thompson, I am interrupting the continued reading of this hearing to ask you a question of my own. The question is: Was not the person who had been summoned to appear as a witness, and who didn't appear because of a doctor's certificate which was given to the committee, was he not Mr. Mates and not Mr. Gojack, anyway?

A. Yes, sir, it was David Mates.

Q. I will now continue to read without omission:

"Mr. Goldstein. Is there any reason for this? I object to this record being kept."

And I would like to interrupt my reading to ask you this question of my own, Mr. Thompson: Did Mr. Goldstein refer then to the stenographer present, taking down what was being said by both sides?

A. Yes, sir.

Q. I will now continue to read without omission:

"Chairman Walter. I do not know what there is to object to.

"Mr. Goldstein. I do not see why it is necessary.

"Mr. Doyle. We keep a record of our proceedings, which is proper. It is public business.

[fol. 154] "Mr. Goldstein. Let me say this. This is why I wanted to see you. I wanted to find out whether you and the committee were aware of the fact that this election was scheduled for the 24th.

"Chairman Walter. Not until we received an insulting telegram. After I received that telegram, then I became aware of the fact that there was an election being held. We had previously absolutely no knowledge of it, and the only reason we decided on this hearing there was because these people are there. If they are well enough to be in Fort Wayne, Indiana, working, they are well enough to testify. That is our attitude.

"Mr. Goldstein. Let me just say this. As far as I am concerned, this visit of mine was simply for the purpose of asking the question that I mentioned a moment ago, whether or not you were aware of that election, and if not, to tell you about it, and to say this: that it looked to us and it would look to a lot of people as though the coincidence of the two was more than a coincidence. Now, I am saying that without accusing you.

"Chairman Walter. I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-[fol. 155] busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States."

I am going to interrupt my continued reading of this for the moment to ask you, Mr. Thompson, a question of my own.

Is that statement—I am going to read it again: "but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States." Is that what Mr. Walter said, or is that inaccurate?

A. That is what Mr. Walter said.

Q. I will now continue to read without omission:

"Mr. Moulder. May I ask a question. I am a little in the dark insofar as this gentleman is concerned, and I do not even know his name or what he represents.

"Chairman Walter. Let us get the record straight. What is your name?

"Mr. Goldstein. My name is—for the record, I want to make it clear that I had no conception that this was going to be in the form of a hearing, or with a record taken. I asked for the very simple thing that a person of my sort [fol. 156] does around the Hill, to talk to a Congressman for a few minutes about a matter. I had no intentions—

"Chairman Walter. Except that you told the people in my office—

"Mr. Goldstein. What I wanted to see you about.

"Chairman Walter. That is right, and so now we are going to take it up with the committee.

"Mr. Moulder. Your name is George Goldstein, and you are the Washington representative, and you are not an attorney.

"Mr. Goldstein. No, I am not an attorney.

"Chairman Walter. If you are going to make representations concerning a postponement, then you are going to do it under oath. If you are not going to do it under oath, and if you are not willing to tell us what is wrong with this man or why the hearing should not continue to go on, then we are just not going to hear it.

"Mr. Goldstein. Let me just say this. I do not want to go under oath for the simple reason because I am not prepared, and I don't think this is a matter that requires a hearing. I am simply asking you to postpone the hearing.

"Chairman Walter. How do you know there is going to [fol. 157] be an election?

"Mr. Goldstein. I do not know."

I am going to interrupt the continued reading to ask you a question of my own, Mr. Thompson.

At that juncture and after what had transpired, didn't Mr. Goldstein say he didn't even know whether there was going to be an election or not, as I have read?

A. Well, from what you read; but I don't recall that that was said.

Q. Do you dispute it?

A. No, I don't dispute it. I just don't recall.

Q. Now I will continue to read without omission:

"Mr. Goldstein. I do not know. You can ask the National Labor Relations Board. They have scheduled an election.

"Chairman Walter. Why are you not willing to swear to these facts? and then we will know whether or not there is going to be an election and when it is going to be held and all about it.

"Mr. Goldstein. If that is your attitude, I will just leave. I don't see any point in pointing it out. I simply wanted to place before you our request, and we welcome your committee there.

"Chairman Walter. I did not know whether there is an election.

[fol. 158] "Mr. Goldstein. Would you like to have me ask the National Labor Relations Board?

"Chairman Walter. I would like to ask you some questions about it.

"Mr. Goldstein. I just don't want to go under oath. I don't see the point in having a hearing.

"Mr. Doyle. I am glad that the gentleman says that they welcome our committee there.

"Mr. Goldstein. I say this, and I will repeat it. This is the thing I wanted to say. I can say in one sentence what I wanted to say to you, Congressman.

"Chairman Walter. You are not going to say anything unless it is under oath. I want to have a record, because I have a telegram that indicates to me that your crowd would stop at nothing. I want whatever you have to say to be under oath. If you are not going to do that, then you are excused.

"Mr. Goldstein. O.K., I am sorry. Thank you.

"Chairman Walter. All right.

"(Whereupon, the committee adjourned at 11:15 o'clock.)"

Do you dispute anything that was read to you in this record?

A. No, sir.

Mr. Hitz: That is all, Your Honor.

[fol. 159] The Court: Any redirect?

Mr. Donner: No, Your Honor.

The Court: Then, Mr. Witness, it was that testimony which you heard read to you which was the basis for your testimony today that Mr. Walter said that he was out to bust the union?

The Witness: Sir, I remember—

The Court: Is that correct?

The Witness: As I recall, there must have been something more than that, either before or after the record was begun, because I do recall the word "bust" being used by either Mr. Moulder or Mr. Walter. As I recall, Mr. Moulder said more than I heard in the record.

The Court: Then you contend that part of the proceedings were not taken down?

The Witness: Well, it may have been a conversation after Mr. Walter adjourned the session.

The Court: I want your recollection on that, if you have any.

The Witness: It is just vague, it's been so long, and I never dreamed it would come back up again.

The Court: All right.

Mr. Hitz: Now I do have some recross, if I may.

By Mr. Hitz:

Q. Mr. Thompson, you say that either Mr. Walter or Mr. [fol. 160] Moulder, to your recollection, did use the expression, "union-busting"?

A. As I recall, yes, sir.

Q. This record that I have read to you used it, too, did it not, attributing it to Mr. Walter?

A. Yes, sir. Not the word "bust," I don't believe, in reference to himself, did it?

Q. No, it did not.

A. No.

Q. I will read the passage in which Mr. Walter used the expression "union-busting." He was quoting from a telegram that Mr. Gojack had sent to Walter, accusing Walter of having that purpose; isn't that right?

A. Yes, sir, that is right.

Q. And this is what happened, did it not:

"Chairman Walter."

On page 3.

"I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe that it is good for the United States."

[fol. 161] Isn't that what Mr. Walter said?

A. That was what Mr. Walter said, yes, sir.

Q. And is he the one and not Mr. Moulder—

The Court: You didn't let him answer.

Mr. Hitz: He did. He said, "Yes, sir."

The Witness: I said, "Yes, sir, that is what Mr. Walter—"

The Court: I didn't hear him. What did he say?

The Witness: That is what Mr. Walter said.

The Court: All right.

By Mr. Hitz:

Q. Now, is that the passage that you attempted to summarize in your article in the way that you did?

A. Yes, sir, except that as I say, Mr. Moulder somewhere said something similar to that. Whether it was after or before, I don't know. It must have been after. It couldn't have been before.

Q. Something similar to what Mr. Walter said?

A. That is right.

Q. And after what I have read Mr. Walter said?

A. Yes, sir.

Q. And yet a few moments ago, I asked you if you had not testified that either Mr. Walter or Mr. Moulder said it, and you said yes, one or the other. Now you are saying both?

A. Yes, sir, I—

[fol. 162] Q. Which is correct? one or the other said it, or both said it?

A. No, they both said it.

Q. So do you want to change your earlier testimony, that they both said it—

Mr. Donner: I object, Your Honor.
The Court: Overruled.

By Mr. Hitz:

Q. You now wish to change your testimony and say that they both said it, instead of that one or the other said it?

Mr. Donner: He is not changing his testimony, Your Honor.
The Court: Overruled.

A. I don't recall that I said that Mr. Walter alone said it, sir. I agreed that Mr. Walter said this, but—

The Court: Said what?
The Witness: Made this statement which Mr. Hitz just read.
The Court: I see.

A. (Continuing)—but I don't believe that I ever testified that Mr. Moulder had not also made a similar statement.

By Mr. Hitz:

Q. Well, it was my understanding that twice you said, [fol. 163] I think once to Judge Pine and once to me, that either Mr. Walter or Mr. Moulder said something about union-busting. Did you not?
A. Yes, sir.
Q. And now you say that Mr. Walter said this, but Mr. Moulder said something like it as well?
A. Yes, sir.
Q. So they both said it?
A. Yes, sir.
Q. The same thing?
A. Well, or similar.
Q. To the same effect?
A. Yes, sir.

Mr. Donner: I have a few questions.

By Mr. Hitz:

Q. And that attributes the union-busting phrase to the so-called insulting telegram from Mr. Gojack to the committee, does it not?

Mr. Donner: I object to this. This is argumentative.
The Court: Sustained. Don't argue with the witness.
The Witness: Except that I—
The Court: I have sustained the objection.
The Witness: Oh.
Mr. Hitz: Thank you, Your Honor.
Mr. Donner: I have a question or two, Your Honor.
[fol. 164] The Court: Yes.

Redirect examination.

By Mr. Donner:

Q. Mr. Thompson, were you aware when the transcription of the hearing started and when it ended?
A. No, I was not.
Q. Did you converse with the people in the meeting? Did you talk to them privately?
A. To—?
Q. Did you talk to Congressman Moulder at any time?
A. Well, I don't recall. We talked to Mr. Walter before the meeting, and I suppose we talked to him briefly after the meeting.
Q. Now, when you wrote the stories which are contained in the Defendant's Exhibits 1 and 2, did you refer to statements made both by Congressman Moulder and Congressman Walter?
A. Yes, sir.

Mr. Donner: That is all.
Mr. Hitz: May I have a short recross, please?

Recross-examination.

By Mr. Hitz:

Q. Do you know Mr. Goldstein, who was the witness at that session, sir?
A. I wouldn't recognize him today, no. I have never [fol. 165] seen him—
Q. Will you look around the courtroom and see if you do see such a person who does familiarize himself with you as being Mr. Goldstein?
A. No, I wouldn't recognize him.

Q. By the way, do you know Mr. Russell Nixon, the former local—

Mr. Donner: I object to this, Your Honor.

The Court: Sustained. That is outside the direct examination.

Mr. Hitz: No further recross, Your Honor.

Mr. Donner: Nothing further.

The Court: Stand down. You are excused.

(The witness left the stand.)

The Court: We will now recess for lunch until one-forty-five.

(Whereupon, at 12:35 p.m., the court recessed for lunch, to reconvene at 1:45 p.m.)

[fol. 166] AFTERNOON SESSION 1:45 p.m.

Mr. Hitz: Your Honor, I think we had interrupted the reading of the report at page 4 at the bottom, where Mr. Gojack was mentioning the various non-Communist affidavits. That particular passage was completed by Mr. Tavenner, and I wonder if the Court would permit me to slightly break the continuity of it to go back and get a little bit of testimony on the subject that interrupted us: that is, the testimony of the reporter as to what he said took place at this session of February 14th. While that is in mind, it might be better for the record, Your Honor.

Thereupon, FRANK S. TAVENNER, resumed the stand and testified further as follows:

Direct examination. (Continued)

By Mr. Hintz:

Q. Mr. Tavenner, you were in the room while the reporter from INS just testified, Mr. Thompson, in which he gave his recollection of what took place at a session of the committee on February 14, 1955, and you heard what he said. You were not present at that session?

A. No, sir.

Q. So of course you will not be asked for any comment

on that. However, having in mind that whatever took place took place on February 14th, can you relate that happening, in point of time, to the continuity of the subpoenas and other matters that had to do with getting Mr. Gojack to the [fol. 167] hearing at which he testified?

Let me ask you, first of-all: Prior to the issuance of a subpoena, of the first subpoena for Mr. Gojack, had any word been given out by the committee that an investigation was projected in Fort Wayne of the UE union?

A. Yes, there had been a public announcement that hearings would be held at Fort Wayne, Indiana.

Q. Can you tell us approximately when that public announcement was made?

A. By having refreshed my recollection as to a telegram which was received by the committee, I can.

Q. And is your recollection refreshed from that?

A. Yes.

Q. Approximately when was the public announcement?

A. February 9th.

Q. February 9th?

A. 1955.

Q. Yes, sir. That was prior to Mr. Gojack having been subpoenaed?

A. Yes, sir.

Mr. Hitz: Would you mark this the next Government number for identification?

Mr. Deputy Clerk: Do you want it marked 9, or——?

Mr. Hitz: Take 9 for this number.

(Telegram referred to was marked as Government's Exhibit No. 9 for identification.)

[fol. 168] The Deputy Clerk: Government's Exhibit No. 9 for identification. (Conferring with Mr. Hitz)

Mr. Hitz: Which I have asked the clerk to mark on his sheet "Telegram of February 10, 1955."

By Mr. Hitz:

Q. Would you look at Government 9 for identification and tell me whether or not that is the telegram that you said refreshed your recollection?

A. It is.

Q. Thank you, sir.

Mr. Hitz: I offer 9 in evidence, Your Honor. (Handing to Mr. Donner)

While they are looking at that,—

By Mr. Hitz:

Q. Mr. Tavenner, do you have—

The Court: No, let's not do two things at once.

Mr. Hitz, you referred to "a telegram." Now they seem to be holding in their hands numerous papers.

Mr. Hitz: That is a UE telegram. They are numerous. They have many pages.

Mr. Rein: It is one telegram, Your Honor.

Mr. Hitz: Yes, sir. It is a UE telegram.

Mr. Donner: I don't see that it has any relevance to the issues in the case, Your Honor, but I have no basic objection to it, only cluttering up the record.

[fol. 169] The Court: Very well, it will be received.

(Government's Exhibit No. 9 was received in evidence.)

By Mr. Hitz:

Q. Mr. Tavenner, is Government 9 from the files of this particular investigation at the committee?

A. I'm sorry, would you repeat the question?

Q. Is this part of the file of the committee?

A. It is.

Mr. Hitz: May I read it to the Court and the record, Your Honor?

The Court: All right.

Mr. Hitz: This is, as Your Honor can see, on a piece of paper that has "Western Union" at the top in the typical form of a Western Union telegram. "Fort Wayne, Ind., 1050 AM." Stamped above that is "FEB 10 11 50 AM."

"REPRESENTATIVE FRANCIS WALTERS

"HOUSE OFFICE BLDG WASH DC

"REPRESENTATIVE WALTERS' ANNOUNCEMENT YESTERDAY OF AN UN-AMERICAN ACTIVITIES COMMITTEE HEARING IN FORT WAYNE JUST PRIOR TO A NATIONAL LABOR RELATIONS

BOARD ELECTION AT THE MAGNAVOX PLANT ON FEBRUARY 24TH IS A FLAGRANT USE OF A CONGRESSIONAL COMMITTEE FOR UNION-BUSTING.

"UE LOCAL 910 HAS HAD CONTRACTUAL RELATIONS WITH THE MAGNAVOX COMPANY FOR 17 [fol. 170] YEARS WITH A RECORD OF GAINS AND ACCOMPLISHMENTS FOR THE WORKERS SECOND TO NONE IN THE ELECTRONIC INDUSTRY. THE MAGNAVOX COMPANY, AIDED BY TWO RAIDING UNIONS, IS SEEKING TO OUST UE SO THAT SENIORITY RIGHTS, HIGHER WAGES, AND OTHER CONTRACTUAL GAINS UNDER UE CAN BE ABOLISHED. WITH FORMER UN-AMERICAN CHAIRMAN THOMAS SERVING A PRISON SENTENCE FOR BRIBERY, WE HAVE EVERY RIGHT TO ASK WHETHER THE MAGNAVOX COMPANY IS PAYING FOR THIS CONGRESSIONAL ASSISTANCE IN UNION-BUSTING. ON MONDAY OF THIS WEEK, THREE DAYS BEFORE REPRESENTATIVE WALTERS ANNOUNCEMENT, THE MAGNAVOX INDUSTRIAL RELATIONS DIRECTOR, ONE GEORGE MCCLAREN, ANNOUNCED TO EMPLOYEES THAT THE UNDERSIGNED WOULD BE SUBPOENAED BY WALTERS. IN VIEW OF MATUSOW'S CONFESSIONS, WE ALSO HAVE THE RIGHT TO KNOW WHICH TYPE MATUSOW WITNESS REPRESENTATIVE WALTERS AND THE MAGNAVOX COMPANY WOULD USE.

"LAST YEAR, UN-AMERICAN ACTIVITIES COMMITTEE MEMBER CLARDY WAS DEFEATED BY THE PEOPLE OF MICHIGAN BECAUSE OF HIS USE OF THIS COMMITTEE AGAINST THE UNITED AUTOMOBILE WORKERS AND IN BEHALF OF THE AUTO CORPORATIONS. ONLY LAST TUESDAY, REPRESENTATIVE WALTERS' OWN CONSTITUENTS REPUDIATED HIS USE OF THE UN-AMERICAN ACTIVITIES COMMITTEE IN A WITCH-HUNT CAMPAIGN IN BEHALF OF THE INGERSOLL-RAND COMPANY OF PHILLIPSBURG, NEW JERSEY. THE [fol. 171] WORKERS IN THAT SHOP ON TUESDAY VOTED FOR UE BY A VOTE OF 1,451 AGAINST 508 FOR THE IAM-AFL AND 204 FOR THE USA-CIO, IN SPITE OF WALTERS' INTERFERENCE IN THAT

SHOP AND HIS LYING CLAIM THAT A 1950 STRIKE THERE WAS 'COMMUNIST-INSPIRED.' SINCE CONGRESSMAN DIES, THIS COMMITTEE HAS BEEN USED TO AID EMPLOYERS IN ATTACKS UPON CIO, AFL AND INDEPENDENT UNIONS. AS THE LATE CARDINAL MUNDELEIN DESCRIBED IT 'IF IT IS REALLY A COMMITTEE TO INVESTIGATE "UN-AMERICAN ACTIVITIES" IT REALLY SHOULD BEGIN WITH ITSELF.' MORE RECENTLY, THE DETROIT FREE PRESS, A PRO-MANAGEMENT PAPER ITSELF, DECLARED EDITORIALLY 'THE MOST UN-AMERICAN ACTIVITY IN THE U.S. IS THE CONDUCT OF THE CONGRESSIONAL COMMITTEE ON UN-AMERICAN ACTIVITIES. IT IS SO VICIOUSLY FLAGRANT A VIOLATION OF EVERY ELEMENT OF COMMON DECENCY ASSOCIATED WITH HUMAN LIBERTY THAT IT IS A FOUL MOCKERY ON ALL THAT JEFFERSON AND LINCOLN MADE ARTICULATE IN THEIR DREAMS OF A CLEANER, FINER ORDER ON EARTH. THE HYPOCRITICALLY NAMED COMMITTEE ON UN-AMERICAN ACTIVITIES SHOULD BE ABOLISHED AT THE EARLIEST POSSIBLE MOMENT BY THE U.S. CONGRESS AND SO DEEPLY BURIED THAT NO OTHER GROUP OF PUBLICITY-MAD ZEALOTS COULD EVER BE ALLOWED TO TARNISH WITH THEIR STENCH THE GREATEST INSTITUTION OF OUR DEMOCRACY, OUR HALLS OF LEGISLATION.'

[fol. 172] "SHOULD THE HOUSE OF REPRESENTATIVES PERMIT WALTERS TO SO BRAZENLY AND OPENLY AID THE MAGNAVOX COMPANY IN UNION-BUSTING, THE HOUSE ITSELF WILL PROVE THE DETROIT FREE PRESS ABSOLUTELY RIGHT IN THE ABOVE-QUOTED EDITORIAL.

"WE RESPECTFULLY REQUEST YOUR INVESTIGATION OF REPRESENTATIVE WALTERS' LATEST ACTION AND HIS OBVIOUS TIE-UP WITH THE MAGNAVOX COMPANY.

"JOHN T GOJACK UE DISTRICT
NINE PRESIDENT
"1835 SOUTH CALHOUN ST FORT
WAYNE INDIANA"

By Mr. Hitz:

Q. Now, Mr. Tavenner, that little telegram was received the day after the public announcement of the investigation; is that correct, sir?

A. Yes, sir.

Q. To that time, had there been any public announcement that it was Mr. Gojack, among others, that would be called to that hearing?

A. No, sir, not that I know of.

Q. And then came the session of February 14th, at which Mr. Goldstein, the local representative of UE, appeared in the office of the committee; is that right, sir? and then took place the session we have discussed?

A. Yes, sir.

Q. And then, I believe your testimony was that the 15th [fol. 173] of February a subpoena was issued for Mr. Gojack to appear in Fort Wayne at a hearing on February 21st. Will you check that?

A. I may have so testified, but I believe, I know that if I did, I made an error as to the date.

Q. All right, sir.

A. (Continuing)—of the issuance of the subpoena.

Q. I see.

A. The subpoena was issued on the 10th day of February and was served on the 15th day of February.

Q. I see. So that the same day that this telegram was written and sent by Mr. Gojack and received by the committee, the committee issued a subpoena?

A. Yes.

Q. Would you know whether the subpoena was issued before or after the receipt by the committee of the subpoena?

A. No, I would have no way of knowing.

Q. And then the hearing in Fort Wayne was to have been February 21st; correct, sir?

A. Yes.

Q. And it was served on the 15th; and I think you have testified that you received a communication from Mr. Scribner, the attorney for Mr. Gojack, by wire, requesting a postponement of the hearing for Mr. Gojack to any time other than that week, any time later than that week; is [fol. 174] that right, sir?

A. That is correct.

Q. For personal reasons and because of the Magnavox hearing?

A. Yes, sir.

Q. And that request for a continuance of his appearance was at first denied by wire of Mr. Beale, the committee clerk, was it, sir?

A. Yes, sir.

Q. Then, subsequently, Mr. Schibner called you on the phone?

A. That is correct.

Q. And was it then that you talked to Mr. Walter personally and obtained a postponement?

A. It was then that I made some personal inquiry of my own regarding the election that was to be held, and then went to the floor of the House of Representatives, called Mr. Walters out and explained the information that I had; and it was at that time that he agreed that the hearing not be held. The investigator who was then out in the field serving subpoenas was advised not to continue with the service of subpoenas until further advised.

Q. I see. Were you familiar with the fact that the committee was going to subpoena Mr. Gojack before he was subpoenaed the first time?

[fol. 175] A. I knew from the time of our hearings in Detroit that Mr. Gojack would be called as a witness at a convenient time.

The Court: Would you suspend while I sign an order that ought to be signed today?

Mr. Hitz: Surely.

(After brief interruption:)

Mr. Hitz: May I proceed, Your Honor?

The Court: Yes.

By Mr. Hitz:

Q. When the subpoena was issued, the first one was issued for Mr. Gojack. Did you know that there was going to be any kind of a Labor Relations election held that would interest the UE?

A. No, I——

Mr. Donner: I object to this, Your Honor. It isn't what he knows; it is what the committee may have known.

The Court: Overruled.

A. No, sir, I did not.

By Mr. Hitz:

Q. So far as you know, did the committee know it?

A. No, sir.

Q. What is the first that you as committee counsel knew that there was an election to be held whenever it was to be held at Magnavox, involving UE?

[fol. 176] A. Several days after the receipt of the telegram, I saw it, and that was the first knowledge that I had that there was a claim that such an election would be held.

Q. You mean when you first saw the telegram, that was the first notice that you knew of?

A. Yes.

Q. And you didn't see it until after it was received, by a couple of days?

A. That is right.

Q. I understand.

And then, when you verified the fact that there was indeed going to be such an election, you obtained the continuance from Mr. Walter?

A. Yes, sir.

Q. That was February 17th, was it? You can refresh yourself if you need to, I think.

A. (Inspecting papers) Yes, sir, February 17th.

Q. How did you transmit that information to Mr. Scribner, who had asked for it?

A. By telegram.

Q. And then I think you said that also on the 17th, the same day, Mr. Scribner wrote you thanking you for the postponement; is that right?

Mr. Donner: This is somewhat repetitious.

A. May I correct myself?

[fol. 177] The Court: It is very repetitious. The witness has just now said he wants to correct himself.

Mr. Hitz: I'm sorry.

A. (Continuing) It was by telephone message instead of by telegram that I advised Mr. Scribner.

The Court: He has gone into all this before.

Mr. Hitz: I think he has gone into most of it, but it was done at a time when the February 14th session hadn't been placed in point of time, and I think that perhaps it has been placed now.

The Court: Very well.

By Mr. Hitz:

Q. All right, Mr. Tavenner, now we can resume reading the hearings that form the subject matter of this case.

Mr. Donner: Your Honor, before Mr. Hitz continues, would it be appropriate to place in the record at this time the stipulation with respect to the filing of those affidavits?

Mr. Hitz: I think it would be appropriate to do it at this time. Shall I state it?

Mr. Donner: Will you please?

Mr. Hitz: If Your Honor will note the last statement or answer, whichever it is, from Mr. Gojack in the testimony, at the bottom of page 4, there is referred to signed affidavits by him for the years 1949, '50, '51, '52, '53, and '54, the one in '54 being dated August 24, 1954, stating in [fol. 178] substance that he was not a member of the Communist Party, or affiliated with such party, and that——

The Court: You mean the affidavit stated that?

Mr. Hitz: Well, whatever the affidavit states——

The Court: You are referring to affidavits, not to his testimony, aren't you?

Mr. Hitz: I am referring to——

The Court: I think you are a little unclear.

Mr. Hitz: I am referring to both, Your Honor. He quotes from, he purports to quote from the affidavit, and I am referring to his quoting from the affidavit. In that answer he says, "I am a responsible officer," and so on, down to "unconstitutional methods."

What I was doing——

The Court: He doesn't say, "I am a responsible officer." He says that he signed affidavits in which he said "I am a responsible officer," and so forth, which is quite different;

because if he had already answered the question, I doubt whether it would be asked again.

Mr. Hitz: Well,——

The Court: At any rate, the transcript speaks for itself. Now, what is the stipulation? Get down to that.

Mr. Hitz: The stipulation that the Government enters into at the request of the defendant is that there was [fol. 179] filed with the National Labor Relations Board affidavits for the years 1949, '50, '51, '52, '53, and '54, by Mr. Gojack, in which he made the oath, with respect to non-Communist activities, to characterize it.

The Court: All right.

By Mr. Hitz:

Q. Now, Mr. Tavenner, would you continue to read from the report without omission, which would mean you pick up with Mr. Scherer's——

Mr. Donner: Excuse me, Mr. Hitz. Would you add to that, that that is in the form as required by Section 9 (h) of the Taft-Hartley Act?

The Court: You mean the affidavit?

Mr. Donner: Yes, sir.

Mr. Hitz: Might I ask the witness a question on that subject? I am not familiar with that enough to make that stipulation.

The Court: All right.

By Mr. Hitz:

Q. Is that the statute that is being complied with when such an affidavit is filed that we are stipulating about?

A. Yes, sir, that is.

Mr. Hitz: We stipulate, Your Honor.

The Court: Very well.

[fol. 180] Portions of Testimony of John T. Gojack Read Into Record.

By Mr. Hitz:

Q. Now will you continue.

A. "Mr. Scherer. Mr. Chairman, I ask that the witness be directed to answer Mr. Tavenner's question, because obviously his answer was not responsive to the question.

"Mr. Moulder. That is correct. The witness is directed to give a direct answer to the question propounded by counsel. As I recall, he asked you whether or not at any time while you have been employed by the UE in any official capacity, were you at any time a member of the Communist Party.

"Mr. Gojack. Mr. Moulder, I don't believe that this committee has any right to investigate my political beliefs or affiliations, especially so when its purpose is union-busting.

"Mr. Tavenner. The answer is not responsive to the question.

"Mr. Gojack. I will explain why. If you want to know my political beliefs, you can check the records in Allen County, Ind.

"Mr. Moulder. The fact that you refuse to answer that question truthfully—would that have the effect of busting the union?

"Mr. Gojack. Every time I cast a ballot in the primary [fol. 181] election I have had to register my party preference and those records are available to you and that convinces me you are not interested in my political affiliation.

"Mr. Moulder. You were asked a very simple question as to whether or not you had ever been a member of the Communist Party while you were employed by or actively engaged in any official capacity for the UE.

"Mr. Gojack. I don't believe that Public Law 601——

"Mr. Moulder. You can answer that.

"Mr. Gojack. Gives this committee the right to inquire into my——

"Mr. Doyle. I do not mean to interrupt you again, but you are proceeding again to read that prepared statement. Why don't you come out for the right and give us a forthright answer, an honest-to-God answer, and answer the question promptly and quickly?

"You know very well whether or not you have been a member of the Communist Party. That is our question.

"Mr. Gojack. My forthright answer is this.

"Mr. Doyle. You have taken about 3 minutes already trying to get out of answering that question.

"Mr. Gojack. I haven't been hedging. You Congressmen [fol. 182] have been taking the floor.

"Mr. Moulder. You said 1949, 1950, 1951, 1952, 1953, and 1954——

"Mr. Doyle. Down to August 24, 1954.

"Mr. Moulder. In 1948 were you a member of the Communist Party?

"Mr. Gojack. This affidavit is still on file. I don't believe the resolution which put you up in business, under the first amendment to the Constitution, gives you the right to inquire into my political beliefs.

"Mr. Moulder. You have no hesitancy in answering the question as to 1949. That was after the law compelled you to sign this affidavit. Prior to that time, say 6 months prior to 1948, were you then a member of the Communist Party?

"Mr. Gojack. Mr. Congressman, because these hearings were set up to interfere in labor board elections in Magnavox and Whirlpool——

"Mr. Moulder. Do you refuse to answer the question?

"Mr. Gojack. No, if you let me answer the question I will answer it. I will give you the answer in my own way.

"Mr. Moulder. Were you a member of the Communist Party in the year 1948?

[fol. 183] "Mr. Gojack. Look—it is not a simple question. When you have got paid liars like Matusow around here and you had a fellow from Ohio that was a lunatic that testified in one case, and this committee——

"Mr. Moulder. You can tell the truth.

"Mr. Gojack. This committee took the word of a lunatic and tried to frame some people, and Cecil Scott and Representative Walter——

"Mr. Tavenner. Cecil Scott never testified.

"Mr. Gojack. The chairman of the committee said Cecil Scott was a lunatic and altered a document before this committee and Walter said he would recommend the matter be referred to the United States Attorney.

"Mr. Tavenner. That doesn't excuse you from telling the truth. What is the truth? Were you a member of the Communist Party at any time before you became a UE employee or since?

"Mr. Gojack. When you have a paid liar like Matusow——

"Mr. Tavenner. He is not testifying about you.

"Mr. Gojack. Matusow tells in his revelations about going into Dayton, Ohio, and meeting with the personnel manager——

"Mr. Scherer. I ask that this diatribe be stopped, Mr. Chairman. I don't have to take that from you even if the [fol. 184] chairman—it is a simple question.

"Mr. Chairman, I ask that you direct him to answer the question. May I ask a question?

"Were you ever a member of the Communist Party? Let's get the record straight because I want to get this record just right. Were you ever a member of the Communist Party?

"Mr. Gojack. I am going to answer that question in my own way.

"Mr. Moulder. The question calls for a civil answer.

"Mr. Gojack. Not while you have paid liars like Matusow and Strunk, who said this lad was running a strike in a guided missile plant in Detroit. I was involved in that strike. It is not a guided missile plant, in the first place. I tried to break that strike on that paid liar's testimony.

"Mr. Scherer. I am directing you to quit talking and answer the question, and if you don't you are in contempt.

"Do you understand?

"Mr. Gojack. I think it is up to the courts to decide who is in contempt, not you. We haven't reached a stage in this country where a Moulder or a Scherer can tell who is in contempt. I have some faith in the courts of this land yet.

[fol. 185] "Mr. Moulder. The Chair directs you to answer the question propounded to you by Mr. Scherer. You have not answered the question, I understand.

"Mr. Tavenner. Let's get together on the question because that is important.

"Mr. Scherer. Mr. Chairman, may I have the floor?

"Mr. Moulder. Yes.

"Mr. Scherer. Were you ever a member of the Communist Party?"

Q. Excuse me, sir.

Mr. Hitz: That is Count No. 1, Your Honor.

The Court: Well, that is no longer in.

Mr. Hitz: That is right. I am just trying to——

A. "My answer to that question is that since 1949 I have signed these affidavits, one on file now. McCarthy had an investigation, which the Department of Justice said——

"Mr. Scherer. Just a minute.

"Mr. Chairman, I ask that you direct him to answer my question.

"Mr. Moulder. The Chair directs you to answer the question.

"Mr. Gojack. I am going to answer your question if you will be patient.

[fol. 186] "Mr. Moulder. When?

"Mr. Gojack. If you will stop interrupting and let me answer, I will.

"Mr. Moulder. How long do you think it will take you to answer?

"Mr. Gojack. I think I can do it in about a minute and a half.

"Mr. Moulder. That question calls for a simple 'Yes' or 'No.'

"Mr. Gojack. Not when you have paid liars like Matusow around who frame these hearings.

"Mr. Moulder. That is enough.

"Mr. Gojack. I think the first amendment to the Constitution protects me in my right to challenge this committee asking me any questions about my political affiliation or beliefs and especially when it is used for union busting.

"Mr. Moulder. Do you claim the privilege under the fifth amendment now?

"Mr. Gojack. No; I have not.

"Mr. Moulder. The Chair directs you to answer the question: Were you ever a member of the Communist Party?

"Mr. Gojack. I am saying the first amendment to the United States Constitution gives me the right to challenge your committee using this hearing for union busting and [fol. 187] for strike breaking as in the case of this paid liar, Strunk, who lied about the Square D strike.

"Mr. Moulder. Do you decline to answer the question?

"Mr Gojack. I will answer the question my own way.

"Mr. Moulder. Do you decline to answer the question for the reasons you have just stated?

"Mr. Gojack. For the reason that the first amendment——

"Mr. Moulder. Do you decline to answer for the reason of the first amendment; is that right?

"Mr. Gojack. No; for the reason that the first amendment of the United States Constitution——

"Mr. Moulder. That is enough. Proceed.

"Mr. Gojack. I want to give my explanation.

"Mr. Scherer. Mr. Chairman, I insist that you ask counsel to proceed now.

"Mr. Moulder. Proceed. However, I want to——

"Mr. Gojack. You are not permitting me to give my explanation of the answer.

"Mr. Moulder. You have not attempted to answer the question. You have been making a speech like an ordinary soapbox Communist orator.

"Mr. Gojack. I haven't had the opportunity to vote my- [fol. 188] self a $10,000 raise.

"Mr. Moulder. Let us proceed.

"Mr. Gojack. I want the record to show I have not been given an opportunity to make an explanation.

"Mr. Moulder. Are you refusing to answer the question because Congress voted itself a $10,000 raise?

"Mr. Gojack. No; but I resent—and not with bitterness against my Government because I love my Government, although I dislike some of the people currently in control of it from Charlie Wilson on down.

"Mr. Moulder. Can you——

"Mr. Gojack. Some of these other corporation people here are here for the sole purpose of using this hearing to bust our union.

"Mr. Doyle. You have made a speech, so your members will know what you have said before the committee.

"Mr. Moulder. I want to resubmit the question whether or not you were a member of the Communist Party in the year 1948 or at any time prior to the time you signed the first affidavit referred to in your testimony.

"Mr. Gojack. My answer to that is——

"Mr. Moulder. You answered the question as to 1949, 1950, 1951, 1952, 1953, and 1954.

[fol. 189] "Mr. Doyle. No, he has not. All he said was he swore to an affidavit. I do not take cognizance that the affidavit is an answer to the question.

"Mr. Moulder. Were you then a member of the Communist Party in 1948, at any time during the year 1948?"

Mr. Hitz: That is Count 2, Your Honor.

The Court: Yes.

A. (Continuing) "Mr. Gojack. The purpose of this hearing clearly in my mind is not legislative in character.

"Mr. Moulder. Do you decline to answer?

"Mr. Gojack. This hearing is designed to influence an election, designed to smear me. You have no right as a committee——

"Mr. Moulder. You are arguing with us. You have not answered the question, you have declined to answer it.

"Mr. Gojack. My answer to the question is when you have paid liars like Matusow, paid liars like Strunk, and paid liars like this lunatic, Cecil Scott, around——

"Mr. Doyle. That is the fourth time you have given those as your reasons.

"Mr. Gojack. There may be others.

[fol. 190] "Mr. Doyle. Don't repeat those same reasons. Start in on some new ones, if you have them.

"Mr. Gojack. I think my reason is about the best one I can think of because I love the United States Constitution and I think that the first amendment ought to protect me, particularly insofar as the first amendment doesn't give or rather guards against the kind of an operation this witch-hunting committee is engaged in.

"Mr. Moulder. Do you claim the privilege under that amendment and decline to answer? Do you decline to answer by claiming the privilege under the first amendment?

"Mr. Gojack. Yes.

"Mr. Scherer. Let's go to the next question.

"Mr. Moulder. All right.

"Mr. Doyle. It is 4:30, Mr. Chairman. We talked about adjourning.

"Mr. Gojack. May I finish my explanation? I haven't finished yet. I mean in regard to this paid liar Matusow, this liar Strunk, Cecil Scott——

"Mr. Scherer. I ask that we proceed with the next question. Matusow was a Communist.

"Mr. Gojack. Also a union buster. He was your boy then. You loved him then.

[fol. 191] "Mr. Moulder. I want to ask you one question: Are you now a member of the Communist Party?"

Mr. Hitz: Count 3, Your Honor.

A. (Continuing) "Mr. Gojack. I have this affidavit on file and that affidavit speaks for itself.

"Mr. Scherer. Wait a minute. I ask that you direct the witness to answer your question. Let's keep this record straight. I am going to make a motion to cite him for contempt.

"Mr. Moulder. The Chair directs you to answer the question 'Yes' or 'No': Are you now a member of the Communist Party?

"It is a very simple question calling for a very simple answer.

"Mr. Gojack. I swore to an affidavit.

"Mr. Moulder. What was the date of the affidavit?

"Mr. Gojack. August 24, 1954.

"Mr. Moulder. I am referring to this date.

"Mr. Gojack. This covers this date. This affidavit is still on file.

"Mr. Doyle. It does not.

"Mr. Gojack. It does.

"Mr. Doyle. The chairman asked you whether or not you are a member of the Communist Party today, the date you are sitting in that chair.

[fol. 192] "Mr. Gojack. I am telling you this affidavit is on file here in Washington and this affidavit, signed and notarized says I am not a member of the Communist Party or affiliated with such party and it also has the reference in there to not believing in or not being a member of nor supporting any organization that believes in or teaches the overthrow of the United States by force or by any illegal or unconstitutional methods. That affidavit is on file and in effect.

"Mr. Scherer. Who do you think you are fooling? I ask you, Mr. Chairman, that you direct him to answer the question.

"Mr. Moulder. The Chair requests that you answer the question as to whether or not you are ndw a member of the Communist Party.

"Mr. Doyle. Mr. Chairman, I submit it is not a matter of requesting, that you as chairman under the law and under your assignment are directing him to answer the question.

"Mr. Moulder. The Chair directs you to answer.

"Mr. Gojack. Under the first amendment to the Constitution you have no right to even have this hearing.

"Mr. Doyle. That is your opinion.

"Mr. Gojack. Yes, and I am entitled to my opinion in [fol. 193] this country still, though we are getting dangerously close to the point when Representative Walter can tell people how to vote in an election.

"Mr. Doyle. Why do you decline to give an honest answer? You don't suppose we will take that affidavit as the answer to this question, do you?

"Mr. Gojack. I am not going to cooperate with union busters. My union is on record as the UAO-WAC, not a bad union, to fight back against McCarthys, McCarrans, Jenners, and Veldes.

"Mr. Moulder. Do you want to answer or do you decline to answer the question that has been asked? Are you now a member of the Communist Party?

"Mr. Gojack. I am letting the record speak for itself.

"* * * * * * *"

Note asterisks.

By Mr. Hitz:

Q. Now, Mr. Tavenner, will you turn to page 9 of the Fort Wayne hearings, so-called Fort Wayne hearings, which are Government 8?

A. Yes, sir.

Q. And would you refer about six lines from the bottom of that page to the statement of Mr. Gojack which you have last read from the report, which is,

"I am letting the record speak for itself." Have you [fol. 194] found the place?

A. Yes, sir.

Q. Now will you continue from where that is said in the full hearings, to the end of that page, so that we will see that the asterisks on page 8 of the report do not leave out anything material to this matter.

A. Yes sir.

"Mr. Scherer. Let's proceed. You have given him every opportunity.

"Mr. Tavenner. Do you want to go ahead any further this afternoon? This is a good breaking place.

"Mr. Moulder. The committee will stand in recess until 10 o'clock in the morning, at which time Mr. Gojack will be recalled."

Q. Thank you, sir.

Now, that concluded the hearings for February 28th; is that right, sir?

A. Yes, sir.

Q. And did the committee convene again on the following day, March 1?

A. Yes, sir.

Q. I think you have already testified, and in any event this report shows, in the middle of page 8, that on March 1 there were present Congressmen Moulder, Doyle, and [fol. 195] Scherer,——

A. Yes, sir.

Q. —is that right?

A. Yes, sir.

Q. Then will you continue with the reading of what transpired on that day?

A. Yes, sir.

Q. Was that likewise in the District of Columbia, as was the hearing before?

A. Yes, sir.

Q. Thank you, sir.

A. At the same place.

"Mr. Moulder. The committee will be in order. * * * Will you call Mr. Gojack.

TESTIMONY OF JOHN THOMAS GOJACK, ACCOMPANIED BY COUNSEL, FRANK DONNER—Resumed"

Mr. Donner: I want to remind you Mr. Hitz, we have another insert at 98 and 99.

Mr. Hitz: All right, sir. That comes later, though, Mr. Donner. You will find that what Mr. Tavenner is now reading is on page 94 of the full hearings, in the middle; and if you will remind me when we reach what would be

page 98, I will be glad to have him read that, too, Mr. Donner.

By Mr. Hitz:

Q. Next.

[fol. 196] A. "Mr. Tavenner. While you were residing in Fort Wayne, was there a strike conducted in General Electric by a local of the UE?

"Mr. Gojack: Yes, sir; there was.

"Mr. Tavenner. What was the number of the local?

"Mr. Gojack. It was at that time UE Local 901.

"Mr. Tavenner. Did the Communist Party participate in any manner in the conduct of that strike?

"Mr. Gojack. That strike was voted by the membership of local 901. The membership voted upon a plan of strike action which included the establishment of committees for various activities in the conduct of the strike.

"Each chairman of the various strike committees made up what was known as a strike strategy committee. That strike strategy committee met every morning in the office of UE Local 901. The entire conduct of that strike was in the hands of that strike strategy committee, the various stewards and picket captains meetings that were called and also the special membership meetings that were called.

"Mr. Tavenner. Who was the secretary of local 901 at that time?

"Mr. Gojack. If I remember correctly, Miss Bertha Scott.

[fol. 197] "Mr. Tavenner. Were you a member of the strike committee?

"Mr. Gojack. No, sir; I was a member of another GE local at the time, but I served in a helpful capacity assisting the local in the conduct of the strike.

"Mr. Tavenner. Did you attend its meetings?

"Mr. Gojack. Some of them, sir.

"Mr. Tavenner. Do you recall attending a meeting on January 16, 1946, at which you presented a letter that had been written to you by the secretary of the Communist Party?

"Mr. Gojack. I don't recall presenting a letter myself.

"I recall one incident in this strike, two, as a matter of fact; one in which the local had received a communication with an offer from someone to give them copies of this

paper or to furnish them to people active in the strike. There was quite a discussion about this. At one strike strategy committee meeting, as I recall, as a matter of fact, a heated discussion. The strike strategy committee took a vote on it. I was not a party to the vote. I was not a party to the discussion other than I was asked a question about this paper and as a matter of fact, I recall this very clearly. Someone raised the question about does reading this so-called Communist paper, I believe it was the Worker, or [fol. 198] the Daily Worker, does that make you a Communist. I remember in response to a question saying that, well, I read the Wall Street Journal and that didn't make me a capitalist, and that I personally read everything I could. I only had seven grades of formal schooling and I gave myself an education after that by reading a lot.

"I have read a lot. I am sorry to say that there are certain things in this country that since the rise of McCarthy are now forbidden reading material and I think that is a sad thing for this country.

"Mr. Moulder. I don't think you need to apologize about your education. You are a very brilliant man.

"Mr. Tavenner. Do you recall whether or not the communication with respect to the making available of the Daily Worker to your strike committee was addressed to you?

"Mr. Gojack. Sir, I don't recall that at all and I might say this: that the lady who took those minutes of that meeting didn't like me at all and on many occasions I found that the minutes she took completely distorted my position in meetings. As a matter of fact, the closest supporter of this woman, one Dallas Smith, who was involved in another incident where some Communists gave them coffee for the strike, and I will be glad to give you the details on the [fol. 199] use of Communist coffee in the strike, that this Dallas Smith later went on to break this union and later was engaged by the General Electric Co. and is today an employee in the personnel office paid off for helping to break that union.

"That union in that plant happens to be in a very weakened position with less than 500 members out of 9,000 workers in that shop, paying dues into the union.

"It was the activities of people like Dallas Smith who

was paid off by the company and this woman who distorted the minutes who are responsible for that.

"Mr. Scherer. Was this woman who you say distorted the minutes a fellow union member at the time?

"Mr. Gojack. She never worked in the shop. She was hired as a secretary. She was then elected to secretary.

"Mr. Scherer. Of the union?

"Mr. Gojack. Of the union.

"Mr. Scherer. You claim she was an employer's stooge for the purpose of sabotaging you?

"Mr. Gojack. I have no evidence to that effect. I merely stated my belief, my knowledge, that she never passed up an opportunity to do a job on me and how she colored her minutes.

"Mr. Tavenner. Now, you have charged Miss Scott with [fol. 200] altering the minutes or improperly reporting them because you see before me a typewritten statement. Is that the reason you are doing it? You are anticipating that I am going to read you the minutes of that meeting?

"Mr. Gojack. I don't know how many paid liars you have working for you. I know of three of my own knowledge.

"Mr. Tavenner. Will you answer the question?

"Mr. Gojack. As to what?

"Mr. Tavenner. As to whether or not the reason for your attacking Miss Scott is that you see that I have before me what appears to be a copy of the minutes?

"Mr. Gojack. I don't see what you have before you. You have all kinds of papers before you.

"Mr. Tavenner. You have told us that the matter was presented to a meeting, and that the account of it was improperly stated by Miss Scott—before I have given you any facts in regard to it at all. Have you seen it before?

"Mr. Gojack. I know it from other reasons.

"Mr. Tavenner. Have you seen it before?

"Mr. Gojack. No, I know this because Mr. Dallas Smith and the group with him who are members of the IUE-CIO, the only McCarthyite union in America, a union that cooperates with you, you had material here yesterday that [fol. 201] the IUE-CIO stole from our union office. You are using material stolen by a rival union. This same union, this same clique, Dallas Smith, who is now working for

General Electric as a boss, have used and distorted what happened during this strike.

"Mr. Scherer. What union did you call a McCarthyite union?

"Mr. Gojack. IUE-CIO.

"Mr. Tavenner. Let's proceed.

"Mr. Gojack. I haven't finished my answer.

"Mr. Tavenner. You are not answering the question. You are arguing extraneous matters.

"Mr. Gojack. I am explaining that I know of this distortion because the IUE-CIO and Dallas Smith had used this in their attempts to wreck the union in 1949 and subsequent to that.

"Mr. Tavenner. You are saying the statement is false before you have heard me make any reference to it.

"Mr. Gojack. I am saying it is false because the IUE-CIO have used this repeatedly.

"Mr. Tavenner. You have stated you have never seen it before.

"Mr. Gojack. I never have——

"Mr. Tavenner. In other words, you are swearing something false which you haven't seen and as to which I have [fol. 202] not yet asked you a question.

"Let me ask you the question and see whether you say it is false: According to the minutes of January 16, 1946, which I quote:

"'A letter was read addressed to Brother Gojack from the secretary of the Communist Party stating that they would like to donate 100 copies of the Worker, weekly paper of the Communist Party.'

"Is that true or false?

"Mr. Gojack. As I recall that meeting——

"Mr. Tavenner. Will you answer the question, please, and then you may explain your answer. Is it true or false?

"Mr. Gojack. I don't recall whether I read the statement. The secretary read the letter first, as I remember.

"Mr. Tavenner. That isn't an answer to the question.

"Mr. Gojack. They asked me if I had a communication. It so happened that I had received one.

"Mr. Tavenner. You had received it. That is the question I have been trying to get you to answer. From whom did you receive it?

"Mr. Gojack. I don't know.

"Mr. Tavenner. Wasn't it from the secretary of the [fol. 203] Communist Party?

"Mr. Gojack. I don't know.

"Mr. Tavenner. Who was the secretary of the Communist Party of the State of Indiana at that time?

"Mr. Gojack. I don't know.

"Mr. Tavenner. Are you acquainted with Elmer Johnson?

"Mr. Gojack. Let me explain my other answer—I don't know.

"Mr. Tavenner. Are you acquainted with Elmer Johnson?

"Mr. Gojack. I will get to that later. I am going to explain my other answer. The reason I don't know whether this communication came from any Communist, I have received communications from the IUE-CIO and I have seen this McCarthyite union forge communications allegedly from the Communist Party for just such purposes as this.

"Mr. Scherer. You are charging another union with forgery now?

"Mr. Gojack. Just the same kind of forgery your lunatic Cecil Scott used.

"Mr. Scherer. He has mentioned Cecil Scott. Cecil Scott testified before this committee I think four years before I became a Member of Congress, but it so happens I must [fol. 204] say in defense of Cecil Scott, that what he said in that executive testimony has been corroborated over and over again by many competent witnesses. And the testimony of Cecil Scott was never released by this committee. I have to say that.

"Mr. Tavenner. You made an explanation as to the IUE forging documents. IUE was not in existence in 1946, was it?

"Mr. Gojack. No; but people who later created this McCarthyite outfit were active in 1946 laying the groundwork for it. Dallas Smith and Bertha Scott were some of those people.

"* * * * * * *"

Note asterisks, please.

Mr. Donner: There is an insert here. This is at page 98, beginning, "Mr. Scherer," going over to page 99 through "objection to this hearing."

By Mr. Hitz:

Q. Mr. Tavenner, will you turn to page 98 of the Government No. 8.

A. Yes, sir.

Q. Do you see the second from the last statement that Mr. Scherer makes on that page?

A. Yes, sir.

Q. "In view of your." Would you read that, and to the [fol. 205] end of what Mr. Gojack says on the top of 99?

A. Yes, sir.

"Mr. Scherer. In view of your taking the first amendment as to whether you were a Communist or not, I would be in sympathy with those people who were trying to get rid of your influence in union activities. I really would.

"Mr. Gojack. You don't understand the position I took here yesterday.

"Mr. Scherer. I thoroughly understand.

"Mr. Gojack. I read into this record my affidavits that are on file and I read them twice. My objection on the ground of the first amendment was to the entire hearing here. You people have no right, this committee has a right to operate only for the legislative purposes.

"You are not operating for a legislative purpose now. You are acting as prosecutor, court and jury—and my understanding of the American system—and despite my inadequate education I think I know more about American history and American traditions and the Constitution than some people in the room; it is quite different from the way this committee is operating.

"I don't think you have the right to ask me these questions about how I think and feel, for if you do, the next step will be your hands over my shoulder in the polling booth [fol. 206] and I don't think we want to come to that.

"When I referred to the first amendment I was referring to that fundamental objection to this hearing."

Q. Since we pick up again in the report just a little bit

later, will you continue to read, and then there will be no omission.

A. All right, sir.

"Mr. Moulder. Your education is not inadequate for the line of work that you are doing. In fact, as I said a while ago, you are plenty sharp and smart.

"Mr. Scherer. Too much so.

"Mr. Tavenner. Let us get back to the question.

"Mr. Gojack. I resent your remark, Mr. Scherer. When he said I was plenty sharp and smart you said 'too much so.' Is it wrong to try to educate oneself in this country? Is it wrong for a labor union to try to be as smart as management?

"Mr. Moulder. Proceed."

Q. Now, Mr. Tavenner, will you come back to page 10 of the report and read? Will you, in doing so, observe that there is no omission at this point, because of what you have read from the full hearings.

No, sir, there is no omission.

Q. Now will you continue to read, but from the report?

[fol. 207] A. "Mr. Tavenner. You say there was considerable discussion and difference of opinion about the acceptance of the copies of the Communist Daily Worker or Sunday Worker. I find this paragraph in the minutes:

"'A general discussion was held on this matter at which time opposition was expressed to such a donation and also those in favor of accepting expressed that people can get considerable information from this paper that they cannot get from any other labor or daily paper in the way of labor news.'

"Is there anything false about that statement in the report in the minutes?

"Mr. Gojack. There was a very lengthy discussion, as I recall, and that paragraph describes part of that discussion, yes.

"Mr. Tavenner. And accurately; doesn't it?

"Mr. Gojack. Not completely. Accurate insofar as it goes, yes.

"Mr. Tavenner. Wasn't the report also accurate in that it stated the letter which was presented was a letter addressed to Brother Gojack from the secretary of the Communist Party?

"Mr. Gojack. I am not sure of that because if a letter had been addressed to me in my capacity as UE district council president without some reference to the GE strike, as I [fol. 208] recall it, there was something on the envelope and I don't know where it came from, about GE strike committee, something like that. That was my reason for taking my letter along there. As I remember, other people, someone in the local, received a similar letter.

"Mr. Tavenner. Who was it?

"Mr. Gojack. I don't recall. If I remember correctly, it was addressed to the district local.

"Mr. Tavenner. This minute says the document was addressed to Brother Gojack. There isn't a reference to any other person. Was the vote finally that of 10 in favor and 7 against accepting this type of assistance from the Communist Party?

"Mr. Gojack. As I recall, I don't remember the exact vote; as I recall the strike strategy committee—I was not a member of it—after a very long debate voted to accept a contribution on the basis that they would accept a contribution from anybody, and if the Wall Street Journal would have sent out a bundle of their papers they would have accepted that.

"Mr. Tavenner. Did you at the time, at this meeting, January 16, 1946, know the leaders of the Communist Party in the State of Indiana? That is, the chairman and the State secretary?

[fol. 209] "Mr. Gojack. I don't even know what the positions represent, I don't know.

"Mr. Tavenner. You did not know who the chairman was and who the State secretary was?

"Mr. Gojack. Mr. Tavenner——

"Mr. Scherer. I ask that you direct the witness to answer the question.

"Mr. Moulder. The witness is directed to make a direct answer to the question.

"Mr. Donner. Will you repeat the question?

"Mr. Tavenner. Repeat the question, please.

"(The reporter read from his notes as requested.)

"Mr. Gojack. I am not at all certain who the chairman and secretary was at a given time. I could answer that by saying, and truthfully, that——

"Mr. Scherer. We assume it is truthfully. You are under oath.

"Mr. Moulder. Proceed.

"Mr. Tavenner. Proceed, please.

"Mr. Moulder. What period of time are you referring to as to who the chairman and secretary was?

"Mr. Tavenner. January 16, 1946.

"Mr. Gojack. As I started to say before I was interrupted by that snide remark from Congressman Scherer, I could answer that question truthfully by saying that I [fol. 210] read the press, and the Indiana press often reported accounts of activities of the Communist Party, officials of it would issue releases or get in the press. I might have known at that time who these officials were. But when I start answering those kinds of questions I feel that we are getting to the heart of the fundamental objective to this committee in its operation here. I don't believe that this committee has a right to ask me who I know, what my political beliefs are.

"Mr. Moulder. He did not ask you that question. He just asked you if you knew who was serving in the official capacity, and as you have stated, you may have acquired that knowledge by reading the papers.

"Mr. Gojack. I don't think they have a right to ask me if I knew Wendell Willkie, whom I knew in Indiana. I don't think you have a right to ask me questions relating to any political connections I may have, any friends I may have, I think we are getting into the heart of my dispute with the committee here. I don't think you have a right to go into any of this.

"Mr. Moulder. He is not asking you about your political affiliation. He is asking you if you knew who was serving——

"Mr. Gojack. Here is what he is doing. He is trying to convict me on a guilt-by-association basis, and I don't think [fol. 211] this committee has a right to indict me, let alone convict me. I think that is a job for the courts in this land.

"I think here this committee is getting too far afield from what Public Law 601 has laid out for it. You are doing the job of the courts here and I think you are usurping the rights of the court.

"(The witness conferred with his counsel.)

"Mr. Scherer. There are only two things this committee can do and that is cite you for contempt if you are guilty of contempt, and secondly, if you would commit perjury or any witness commits perjury, refer the testimony to the Department of Justice. That is all this committee can do. It cannot do anything else. It cannot convict anybody.

"Mr. Donner. Is the reporter recording the fact that I consulted with my client?

"Mr. Moulder. Yes.

"Mr. Donner. May I object to that, please?

"Mr. Moulder. The record will show your objection. As I understand the question, it has nothing to do with your association, political association, or any objection you have raised. The question is merely do you know who was serving in that period of time in a certain official capacity. Is that right?

[fol. 212] "Mr. Tavenner. Yes, sir.

"Mr Gojack. Since Mr. Tavenner has mentioned this name of—what was it—Johnson? I recall knowing from newspapers or discussions that name of Johnson as some Communist official in Indiana. I don't know his position and I don't know when he was an official, and don't know the time.

"Mr. Scherer. Is that the only way you know Johnson, because you read it in the newspaper? Is that the only way you know Johnson? Is that what you are telling us?

"Mr. Gojack. No, that is not the only way.

"Mr. Scherer. Tell us how well you knew Johnson.

"Mr. Gojack. I didn't know Johnson well.

"Mr. Scherer. Or how slightly you knew him. You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way that you knew Johnson."

Mr. Hitz: That is Count 4, Your Honor.

A. (Continuing) "(The witness conferred with his counsel.)

"Mr. Donner. I want to renew my objection if the record continues to show consultation.

[fol. 213] "Mr. Moulder. Well, also have the record show that the witness has a perfect right to confer and consult with you at any time.

"Mr. Donner. I understand.

"(The witness conferred with his counsel.)

"Mr. Gojack. I want to decline to answer that question on the following grounds. It is here where in this area of questioning that I grow fearful of the use of a paid liar like Matusow, a paid liar like Strunk, and a paid lunatice and convicted forger like Cecil Scott and any other paid informers that you may have, and because I feel as strongly——

"Mr. Scherer. Sounds like the article your counsel wrote for the Nation magazine. I remember reading those things in that magazine.

"Mr. Gojack. If you will be patient I will give you my next comment.

"Mr. Scherer. I am very patient.

"Mr. Gojack. I agree with the Baltimore Sun and Time magazine which said that the Matusow case reminds us that stoolpigeons are as a class to be despised and not to be trusted——

"Mr. Moulder. Those are the reasons that you——

"Mr. Gojack. I haven't finished my reasons.

"Mr. Moulder. You wish to list some more reasons for [fol. 214] refusing to answer the question?

"Mr. Gojack. Yes.

"Mr. Moulder. How long do you think it will take?

"Mr. Gojack. About a half minute.

"Mr. Moulder. All right.

"Mr. Gojack. Because I fear the use of such paid informers who as a class are to be despised, I fear to answer that question and therefore I invoke the protection afforded by the first amendment to the United States Constitution and I reiterate my basic objection that the first amendment to the Constitution does not give this committee the right to inquire into any of my beliefs, any of my connections, any ideas I may have.

"Mr. Scherer. Mr. Chairman, I ask that you direct the witness to answer my question. The first amendment is no basis for refusal to answer that question.

"Mr. Moulder. Is it your question?

"Mr. Scherer. My question is——

"Mr. Moulder. The Chair directs the witness to answer the question propounded by Mr. Scherer. As I understand it, you refuse to answer for the reasons stated.

"Mr. Gojack. Yes.

"• • • • • • •

"Mr. Tavenner. Are you acquainted——"

[fol. 215] Q. I'm sorry, will you note after "Yes" that there are asterisks.

A. Yes, excuse me.

Note asterisks, please.

"Mr. Tavenner. Are you acquainted with Henry Aron, A-r-o-n?"

Mr. Hitz: Count 5, Your Honor.

The Court: Yes.

A. (Continuing) "Mr. Gojack. To this and to every other question you ask me along these lines for the reasons I have stated earlier, I don't know what paid liar you have here to do a Matusow job on me.

"Mr. Moulder. We do not have any paid liars, neither has the committee ever employed any witness to testify or compensated any witness for his testimony any more than you are going to be other than for your milieage and attendance before the committee.

"Mr. Gojack. You had a Matusow who has said quite differently, from what I have read.

"Mr. Scherer. We have heard about Matusow from you all day yesterday and all day today. He came from the Communist——

"Mr. Gojack. I don't know Strunk but I know he is a liar.

"Mr. Scherer. He came from the same Communist Party [fol. 216] that you refuse to say under the first amendment whether you were a member of or not.

"Mr. Gojack. When you cite testimony here as the counsel for the committee did yesterday from a so-called underground agent, Strunk, that is so fantastically a lie as that this woman who was 200 miles away ran a strike at Bay City when Bay City is a long way from Detroit, and that the strike was at a guided missile plant where Square D never made guided missiles, and when Congressman Clardy used that paid liar's testimony to try to break that strike.

"Mr. Scherer. We are getting away from the question.

The question was did he know this man Aron. He is dancing around. Do you know Aron? That is the only question.

"Mr. Gojack. I have already declined. Aren't you with us?

"Mr. Moulder. On the ground of the first amendment?

"Mr. Gojack. Yes, sir; for the reasons stated, and all of the fundamental objections that I have on the ground the first amendment doesn't give you the right to even hold this hearing, let alone ask me these questions.

"Mr. Moulder. Proceed.

"• • • • • • •"

[fol. 217] "Mr. Tavenner. Mr. Gojack,——"

By Mr. Hitz:

Q. Are there omissions there?

A. Yes. Asterisks noted, please.

"Mr. Tavenner. Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron ever appear and address a group of people when you were present?"

"Mr. Tavenner. Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron ever appear and address a group of people when you were present?"

Mr. Hitz: Count 6, Your Honor.

A. (Continuing) "Mr. Gojack. To that question and to every other question like it, I repeat my basic objection that this committee has not right to ask me this question, the first amendment to the Constitution prohibits your inquiring into my political beliefs, what meetings I went to. My goodness, if you are allowed——

"Mr. Scherer. Mr. Chairman, we have heard this speech a dozen times.

"Mr. Moulder. Mr. Gojack, you have no right to object to a question being propounded to you during the proceedings of this hearing. You can decline to answer for legal reasons if you wish to do so. Why don't you give a direct answer, a direct response, rather, by answering the question or declining to answer instead of objecting to the committee even existing or the act of Congress creating it, and answer the questions propounded by counsel?

[fol. 218] "We understand your opposition to the com-

mittee, your bitterness against the committee functions. You have clearly expressed yourself along that line, but I don't think you should proceed to make that statement every time you are asked a question.

"Mr. Gojack. Mr. Moulder, this goes to the heart of my objections because——

"Mr. Moulder. Then decline to answer for the reasons previously stated on the first amendment to the Constitution, as provided by the first amendment to the Constitution if that is your reason.

"Mr. Gojack. I will do that, but I would like to finish my reply to this one. If this committee can ask me those questions, then you can ask me questions about meetings at which I attended with other trade unionists, A.F. of L. and CIO, Republican Labor Club, then some Democratic committee or itself can declare somebody being involved in 20 years of treason.

"Mr. Scherer. We are only asking you about Communist meetings. That is all we are interested in.

"Mr. Gojack. To some people like your friend McCarthy, being active in another political party involves treason, and my point is that this goes to my basic objection. You have no right to ask me the question.

[fol. 219] "Mr. Scherer. Direct the witness to answer Mr. Tavenner's question.

"Mr. Moulder. The witness is directed to answer the question.

"Mr. Gojack. I decline to answer on the ground previously stated.

"* * * * * * *"

Note the asterisks, please.

"Mr. Tavenner. Are you acquainted with Russell Nixon?

"Mr. Gojack. Yes, I know Russ Nixon."

By Mr. Hitz:

Q. Mr. Tavenner, may I interrupt you a moment. Mr. Tavenner, you read some of the testimony of Miss Dorothy Funn before the committee, given in, I think, 1953, in which she stated that she had met in a Communist cell here which was comprised of lobbyists——

Mr. Donner: I object to Mr. Hitz summarizing.
The Court: Sustained.

By Mr. Hitz:

Q. Do you recall the testimony to which I refer?
A. Yes, sir.
Q. Now, after that, and before the testimony of Mr. Gojack, did the committee call before it Mr. Nixon?
A. Yes, sir, it did.
Q. Will you tell me whether or not the committee asked [fol. 220] Mr. Nixon questions concerning his own Communist Party activity?
A. It did.
Q. Give counsel an opportunity to object if he cares to. Did Mr. Nixon answer the committee's questions as to his Communist Party activity?

Mr. Donner: I object, Your Honor.

By Mr. Hitz:

Q. Will you produce the record?

Mr. Hitz: I'm sorry. Does the Court sustain?
The Court: Yes.

By Mr. Hitz:

Q. Have you got it, sir?
A. Yes, sir.
Q. Will you give us the date and place of it, and then read that portion of it?
A. Mr. Nixon was subpoenaed before the Committee on Un-American Activities and testified on June the 9th, 1953. He was interrogated about numerous matters.
Did you ask me to read the pertinent parts?
Q. Yes, sir.

PORTIONS OF TESTIMONY OF RUSSELL NIXON READ INTO RECORD.

A. I read from page 1,675 of Volume II of the 1953 hearings of the committee.
Q. And will you give the more precise title of that par- [fol. 221] ticular part of the hearings?

A. "Communist Infiltration—Government and Labor."

"Mr. Tavenner. Did other labor organizations have legislative representatives in Washington?

"Mr. Nixon. At what time, Mr. Tavenner?

"Mr. Tavenner. During the time that you held that position.

"Mr. Nixon. Oh, yes.

"Mr. Tavenner. Was there any means of cooperation developed between you as the legislative representative of your union and the representatives of other labor organizations?

"Mr. Nixon. During the period that we were in the CIO we had the CIO legislative committee, which generally coordinated its activity and programs in Washington in the legislative field.

"Mr. Tavenner. During that period of time, did you become acquainted with Mrs. Dorothy K. Funn, who was the legislative representative holding a similar position to that of yours, except that she represented the National Negro Congress?

"Mr. Nixon. I decline to answer that question on the grounds already stated."

Q. What were those grounds, sir?

A. It included the Fifth Amendment to the Constitution. [fol. 222] Q. I see.

A. "Mr. Tavenner. Mrs. Funn testified in a hearing recently conducted in New York City on May 4, 1953; the following questions and answers occurred during that hearing."

Do you desire that I read those? It is the same testimony that I read into evidence this morning from Mrs. Funn's testimony.

Q. Perhaps we can omit that, if you are permitted to answer this question: On that occasion did Mr. Nixon state to the committee whether or not he had been a member of the Communist Party?

A. After confronting Mr. Nixon with the testimony of Mrs. Funn, which I read into the record this morning, this question was asked Mr. Nixon:

"Now, Mr. Nixon, was Mrs. Funn correct in identifying you as having attended Communist Party meetings com-

posed of legislative representatives of various organizations here in the District of Columbia?

"Mr. Nixon. As I have made abundantly clear, I decline to answer that question for reasons already stated.

"Mr. Tavenner. Did you ever sit in a Communist Party meeting with Mrs. Funn?

"Mr. Nixon. The answer is the same, Mr. Tavenner.

[fol. 223] "Mr. Tavenner. Are you now a member of the Communist Party?

"Mr. Nixon. For the reasons I have already made clear to you, I decline to answer that question."

Q. All right, Mr. Tavenner, did he subsequently answer those questions to the committee?

A. No, sir.

Q. Has he ever?

A. No, sir.

Q. Till the time that these questions were asked Mr. Gojack concerning Mr. Nixon?

A. That is right.

Q. Does the committee now know whether Mr. Nixon was a member of the Communist Party from any testimony of his own?

A. No, sir. The committee has not been able to get any.

Q. From testimony of his own?

A. Has not been able to get any testimony from Mr. Nixon regarding his alleged Communist Party activities in this country or abroad.

PORTIONS OF TESTIMONY OF JOHN T. GOJACK READ INTO RECORD.

Q. Now will you read the rest of the questions that were asked of Mr. Gojack on this subject, the Nixon subject?

A. "Mr. Tavenner. Was he known to you to be a member of the Communist Party?

[fol. 224] "Mr. Gojack. Russ Nixon is known to me to be a Washington representative, legislative representative of our union.

"Mr. Tavenner. Yes, we know that. Will you answer the question, please?

"Mr. Gojack. To this question, sir, and any question

about any other individuals regarding political beliefs or affiliations, sir, I respectfully decline to reply on the grounds on which I am challenging the jurisdiction of this committee.

"Mr. Moulder. Do you not realize that the courts have held that the Communist Party is not a political organization, that it is not a political party?

"Mr. Gojack. Frankly, I don't know what it is in terms of the court decisions. I read the other day where a fellow was convicted in Chicago for 5 years for being a member of it, under the Smith Act. I am not keeping pace with these court decisions.

"Mr. Scherer. Then it would not be a political party if you could be convicted and sentenced for 5 years for belonging to it. It is a criminal conspiracy as much as any other conspiracy on the Federal criminal statutes.

"Mr. Doyle. Mr. Scherer, may I supplement your observation by saying, assuming that the finding of the Fed- [fol. 225] eral court was according to the evidence and law, it would mean that this committee could not possibly be inquiring into your political affiliations when we are asking you whether or not you are a member of the Communist Party, because the court has held that the Communist Party is not a legitimate political party, as I understand Mr. Scherer's observation.

"Mr. Gojack. Sir, I am neither a lawyer nor a Government expert on this question. I remember reading in the New York Times the other day where a Multer, one of your fellow Congressmen from Brooklyn, said that under this new law to outlaw Communists, the Communist Control Act of 1954, the one that Humphrey tacked some amendments onto—according to that one, he stated President Eisenhower could be proven a Communist. I don't know what the legal——

"Mr. Doyle. May I just sincerely observe, Mr. Gojack, you may not be a lawyer, but you are a very able and very well read young man, apparently. You are a very well informed labor union leader. I say that because that is my impression from your testimony. You do not need to apologize for not being well read and well informed, because manifestly you are, and you are a very able witness, very, very well informed in all the areas in which you are being questioned.

[fol. 226] "Mr. Gojack. Thank you, Mr. Doyle.

"Mr. Scherer. The question still is——

"Mr. Moulder. May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party? I am just asking whether or not you know that."

Mr. Hitz: Count 7, Your Honor.

A. "Mr. Gojack. Sir——

"Mr. Moulder. Do you or do you not know? I am not asking you to state whether or not he is, but whether or not you know.

"Mr. Gojack. Sir, I respectfully submit that that question cannot be propounded to me by this committee because it seeks to expose someone, and I don't think that the law under which this committee operates was set up for exposure purposes. My understanding is that that is what the courts are for, to expose people.

"Mr. Scherer. Their job is to judge, not to expose. It is the job of this committee to expose Communists. That is one of its primary duties, to expose Communists and the nature of the infiltration of the Communist conspiracy in every activity and agency of American life, which includes labor unions.

"Mr. Moulder. Do you decline to answer that question?

"Mr. Gojack. Yes, sir, on the grounds previously stated.

[fol. 227] "Mr. Tavenner. May I suggest that he be directed to answer.

"Mr. Doyle. I move he be directed to answer, Mr. Chairman.

"Mr. Moulder. You are directed to answer the question.

"Mr. Gojack. Sir, I respectfully decline on the grounds previously stated."

Please note asterisks.

"Mr. Tavenner. You have volunteered that you engaged in many meetings in what you have termed in behalf of peace. You are familiar with the Communist Party line, I suppose, with regard to the Stockholm peace appeal and various others that followed it; are you not? You are not?

"Mr. Gojack. I am not even sure what you mean by the question.

"Mr. Tavenner. Did you take an active part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the American Peace Crusade?"

Mr. Hitz: Count 8, Your Honor.

A (Continuing) "(The witness conferred with his counsel.)

[fol. 228] "Mr. Gojack. Sir, on this and all other questions that deal with my activity in any organizations, political or otherwise, what I think, how I feel, what I did about peace, whether I went on a specific delegation or not, and with whom—to all such questions I must respectfully decline to answer on the ground that the first amendment to the Constitution does not give the committee the right to pry into my beliefs.

"Mr. Scherer. Mr. Chairman, I ask you to direct the witness to answer.

"Mr. Moulder. Yes, Mr. Gojack, you are directed to answer the question.

"Mr. Gojack. I respectfully decline to answer for the reasons stated.

"Mr. Tavenner. I want to make it clear, Mr. Gojack, that I am not interested at all in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power. That is what I am interested in. My questioning of you is to determine what knowledge or information you had on the subject.

"Mr. Moulder. May I say, Mr. Tavenner, in connection with your statement, that the so-called peace moves on the [fol. 229] part of the Soviet Union were being instigated over here as propaganda so as to prevent any opposition to their aggression and domination of the free world.

"Mr. Doyle. Mr. Chairman, may I add to those two fine statements that I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The

question is the extent to which the Communist Party had infiltrated American labor unions, if you know anything about it, the extent to which they were using it then and are using it now for their conspiratorial purposes.

"That is all, Mr. Counsel.

"Mr. Tavenner. The documents which I handed you have dates which are very significant. The letter from Mr. Nixon was on March 27, which was after the so-called peace pilgrimage to Washington, which occurred on March 15; but the letter which he enclosed from the Communist-dominated outfit in Paris was dated February 16, 1951. Normally it would have been expected to have been disseminated before your peace pilgrimage here.

[fol. 230] "May I ask you whether or not that letter had any influence upon your action then or later?

"Mr. Gojack. Which letter are you referring to?

"Mr. Tavenner. The letter from Mr. Nixon.

"Mr. Gojack. The letter from Mr. Nixon had no influence on any actions I took with regard to peace. I have acted on my own initiative on that question—letters to the editor at home, and delegations, and many activities.

"Mr. Tavenner. If you have disseminated among all your unions, representing thousands of members, this propaganda document from Paris, then you were performing a substantial chore for the Communist Party; weren't you?

"Mr. Gojack. Sir, I didn't testify that I circulated that. I testified that I remember vaguely that on one such communication from some trade union in Europe, which I showed around to people whom I met in my work, someone asked me if they could have extra copies of that. I remember mimeographing that, I am not at all certain—I didn't testify that it was this thing here, and it wouldn't have been circulated to thousands, sir. If it were a matter of something that came from our Washington office or our national office and didn't go directly to the locals, we sent it to [fol. 231] about 25 local unions. Then the local unions themselves decided what to do with it, whether to file it, read it at a meeting, or throw it in a waste basket.

* * * * * * *

Note asterisks, please.

"Mr. Tavenner. Now I hand you the February 1, 1951, issue of the Daily Worker, at least a photostatic copy of it. It relates to the American Peace Crusade. It gives the names of those who were the initial sponsors of it. I will ask you to state whether or not there appears among the list of sponsors the name of John Gojack, international vice president, UERMWA, Fort Wayne, Ind.

"(Document handed to the witness.)

"Mr. Gojack. This document appears to be a photostat of the paper you described, with the notation that 65 notables——

"Mr. Tavenner. Will you answer the question, please. Your statement is not responsive to my question.

"Mr. Gojack. I am sorry.

"Mr. Tavenner. The question is: Will you examine to see whether or not your name is listed as one of the original sponsors of that organization?

"Mr. Gojack. On this paper you show me, this photostat, [fol. 232] rather, my name is listed down there.

"Mr. Tavenner. Does there not appear above your name the statement, 'Other original sponsors include'?

"Mr. Gojack. After a listing of Thomas Mann, the Nobel Prize winner, four Protestant bishops and leading scientists, writers, Negro leaders, and trade unionists, the language appears which you read on the paper you handed me: 'Other initial sponsors include.'

"Mr. Tavenner. Does your name appear among those included as original sponsors?

"Mr. Gojack. Yes; on this document here, my name appears along with some A. F. of L. and CIO leaders, also.

"Mr. Tavenner. Yes; I know. That is a voluntary statement by you. What I want to find out is, Who solicited you as one of the original sponsors?

"Mr. Gojack. On that question, sir, I respectfully decline to answer on the grounds previously stated."

Mr. Hitz: That was Count 9, Your Honor.

A. (Continuing) "Mr. Tavenner. What method was used to get you as an original sponsor?

"Mr. Gojack. I respectfully decline to answer, sir, for the reasons previously stated.

"Mr. Scherer. I ask that you direct the witness to answer [fol. 233] the last question.

"Mr. Moulder. The witness is directed to answer the question.

"• • • • • • •"

Please note asterisks.

"Mr. Gojack. I respectfully decline to answer for the reasons stated, Mr. Chairman.

"• • • • • • •"

Please note asterisks.

[fol. 234] Q. Mr. Tavenner, you just completed reading from the report on page 16, and the last part that you read was Mr. Gojack stating,

"I respectfully decline to answer for the reasons stated, Mr. Chairman."

You will note that there are some omissions immediately before that statement by Mr. Gojack. I think that for the sake of completeness and because of the importance of the direction to answer and his answer to the direction, we should fill in the asterisks.

Would you please turn to page 150 of the full hearings, and five lines from the top of page 150, you will find the following:

"Mr. Moulder. The witness is directed to answer the question."

That is just before the asterisks in the report, is it not?

A. Yes, sir.

Q. Will you continue to read through Mr. Gojack's answer that is given on page 16, as it appears on page 150?

A. "Can we not eliminate this request for direction to answer at the beginning by just assuming that every question asked of you, you are directed by the committee to answer? The committee, through the Chair, does direct the witness to answer the question."

[fol. 235] Q. Let me interrupt. That is stated by Mr. Moulder, is it?

A. Yes, sir.

Q. Continue without omission, please.

A. "Mr. Donner. Your statement about the assumption with respect to directions does not govern this hearing?

"Mr. Moulder. That is correct.

"Mr. Gojack. I respectfully decline to answer for the reasons stated, Mr. Chairman."

Q. Thank you, sir.

Mr. Hitz: Will you mark this document, please, Government No. 10 for identification.

For descriptive purposes, Your Honor, it is the exhibit that is marked No. 9 in the tentative list of the Government, described there as Annual Report of the Un-American Activities Committee for 1955.

(Report referred to was marked as Government's Exhibit No. 10 for identification.)

The Court: Proceed.

OFFER IN EVIDENCE

Mr. Hitz: Your Honor, we offer Government No. 10 for identification in its entirety. (Handing to Mr. Donner)

We particularly invite the Court's attention to and will read, if permitted, into the record page 1, the last paragraph on 2,——

The Court: Of course, I don't have it, and I can't follow [fol. 236] along what you are saying. If you will let me have the exhibit,——

Mr. Hitz: Here is a copy for you. (Handing up copy) That is a working copy for Your Honor, if you care to have it.

The Court: All right.

Mr. Hitz: All of page 1,——

The Court: Yes?

Mr. Hitz: Shall I continue, or does the Court care to read it?

The Court: No, go on. Continue.

Mr. Hitz: —the last paragraph on page 2, which is continued over to page 3; page 4, beginning at the middle, "In the course of the past year," and from there to the end of the page; pages 20, 21 and 22, those portions that are headed, "Fort Wayne, Ind., Area"; pages 33, 34 and 35, those portions entitled "Reference Service"; page 35, under

the heading, "Recommendations," through part 1 in the middle of the page 35; parts 3, 4 and 5, and on page 36, part 8.

That is my offer, Your Honor.

The Court: There being no objection, it will be received.

Mr. Donner. Your Honor, I assume that the whole document will be offered in evidence and may be referred to for any other purpose, subject to——

[fol. 237] Mr. Hitz: I am offering the whole document, yes.

Mr. Donner: Then I have no objection.

The Court: Very well.

(Government's Exhibit No. 10 was received in evidence.)

By Mr. Hitz:

Q. Mr. Tavenner, do you have a copy——

Mr. Hitz: And could I have the evidence copy, Mr. Donner?

Mr. Donner: Yes. Have you got another one?

Mr. Hitz: Yes.

The Court: You are going to make him read all this?

The Witness: Of which report?

Mr. Hitz: I would like Mr. Tavenner to read the portions that I directed Your Honor's attention to, that I asked Your Honor to note.

The Court: The usual way would be for the District Attorney to do the reading.

Mr. Hitz: Well, he reads so well, and I read so poorly, I would like to depart, if I might,——

The Court: He might deny that flattery.

The Witness: Yes, I would rather deny that.

The Court: All right, if you want it read orally——

Mr. Hitz: That is right, Your Honor.

The Court: ——because you think then it will be better [fol. 238] to receive it in that manner; is that correct?

Mr. Hitz: I think so. It would help us and the record as well.

The Witness: Is that the annual report for 1955 or '54?

Mr. Hitz: '55.

Mr. Donner: May I have another copy to follow with you?

Mr. Hitz: I don't believe I have one. Maybe the Court will let you read the evidence copy.

Mr. Donner: I have one.

Mr. Hitz: Very well.

By Mr. Hitz:

Q. Mr. Tavenner, will you please read page 1 of Government's 10, the annual report for 1955?

A. Yes.

"ANNUAL REPORT FOR THE YEAR 1955

"FORWARD

"Investigations and hearings conducted by the Committee on Un-American Activities during 1955 unearthed important new evidence of Communist subversion in vital areas of American life.

"The committee submits the following report on its work last year, in accordance with Public Law 601 (sec. 121, subsec. q (2)) and House Resolution 5 of the 84th Congress.

"This legislation empowers the committee to investigate [fol. 239] the extent, character, and objects of un-American propaganda activities in the United States. It also requires reports to the House of Representatives on the results of any such investigation, together with such recommendations as are deemed advisable.

"Machinations of the Kremlin's conspirators in this country were revealed in the course of public hearings held in 1955 in New York, New Jersey, Illinois, Wisconsin, California, and Washington State, in addition to Washington, D. C. A total of 178 witnesses appeared at these hearings, the printed record of which comprises approximately 3,160 pages.

"The committee obtained information from 36 of these witnesses. A majority of them were either one-time members of the Communist Party who had become disillusioned upon discovering the party's true purpose, or undercover agents within the party for Federal or municipal law-enforcement agencies. By their firsthand accounts of Communist efforts to undermine our most important democratic institutions, these witnesses made a major contribution to the Congress' understanding of the Communist problem and

its ability to legislate wisely in the field of subversive control.

"The committee regrets to report that 142 other witnesses refused to provide the committee with the valuable informa-
[fol. 240] tion they are known to possess. In all but five instances, these witnesses invoked the privilege of the fifth amendment. One of the exceptions was John T. Gojack, an official of the Communist-controlled United Electrical, Radio, and Machine Workers of America, who refused to answer all committee questions on the ground that they represented an unconstitutional invasion of his right of free speech. The House of Representatives has requested the Department of Justice to institute legal proceedings against Mr. Gojack for contempt of Congress.

"In accordance with the committee's rules of procedure, all investigations during the past year were instituted after approval by a majority of the members of the committee. At the opening of each public hearing, the presiding chairman clearly outlined the purpose of the investigation and hearing. At no public hearing were there fewer than two members of the committee in constant attendance. Persons identified for the first time in public hearing as having subversive affiliations were notified of the fact by registered letter, where practicable.

"Wide-ranging investigations and hearings by the committee last year uncovered such evidence as the following:—"

[fol. 241] The Court: Didn't you say that you wanted page 1, and then you would skip down to the——

Mr. Hitz: Yes.

By Mr. Hitz:

Q. After page 1, we should skip, Mr. Tavenner, to the bottom of 2, "Documented proof," and so forth.

A. Yes, sir.

"Documented proof that a Communist-dominated union siphons off workers' dues for Communist purposes was produced in the course of committee investigations and hearings on District 9 of the United Electrical, Radio, and Machine Workers of America. UE District 9 supervises union locals in Indiana and Michigan from headquarters in

Fort Wayne, Ind. These hearings were printed under the title, 'Fort Wayne, Ind., Area.'"

Q. Now turn to page 4 and read from the middle on, sir.

A. "In the course of the past year, this committee prepared and printed a cumulative index to all hearings and reports of the committee from its inception in 1938 through 1954. Whereas earlier cumulative indexes issued by the committee were confined to the names of individuals, the new index for the first time contains not only individuals but also organizations and publications mentioned in hearings and reports from 1938 through 1954.

[fol. 242] "This mammoth project was undertaken in the belief that it would be of inestimable assistance to the work of the committee's staff, the Congress, and the various Federal, State, and municipal agencies concerned with the problem of the Communist conspiracy. The reception which the new index has already received completely justifies the undertaking. The committee would like to call attention to the warning, clearly carried in the index, that the mere listing of any person, publication, or organization in the index constitutes no evidence of derogatory information in committee hearings and reports. Anti-Communists as well as Communist individuals and organizations are frequently mentioned in committee publications and both have been listed in accordance with customary indexing procedures.

"Members of Congress have continued to call upon the committee for information on subversive activities. The reference section answered more than 1,300 requests submitted by individual Members of Congress during the past year, in addition to its services for the committee staff and various agencies of the executive branch of the Government. To supply these services, the committee maintains comprehensive information files dating back many years and constantly growing in volume and value."

Q. Now will you turn to page 20, please.

[fol. 243] A. "Fort Wayne, Ind., Area

"The committee's continued investigation into Communist-dominated unions last year produced documented proof that leaders of such unions have misappropriated workers' dues for Communist Party purposes.

"Proof was obtained in the course of preparations for

committee hearings on the activities of District 9 of the United Electrical, Radio, and Machine Workers of America. This district has headquarters in Fort Wayne, Ind., and supervises the affairs of local unions in both Indiana and Michigan.

"The national organization of UE was expelled from the CIO in 1949 because of the union's flagrant subservience to the Communist Party line. The committee scheduled an investigation and hearing in 1955 to determine whether the district office which guides locals in two important Midwest States was continuing the discredited policies of the national UE and placing Communist Party objectives above union interests.

"Investigation preceding the hearings showed that District 9 of UE was in fact operating under the control of Communists and their apologists, with workers' interests only a secondary concern when party purposes conflicted. In the course of this investigation, the committee obtained the official minutes of various meetings of the executive [fol. 244] board of UE District 9. These documents contained incontrovertible evidence that the leadership of District 9 had diverted workers' union dues to the support of the Communist Party.

"The minutes obtained by the committee covered meetings of the District 9 executive board held on December 16, 1950; February 2, 1952; March 28, 1952; September 10, 1952; and October 6, 1952. With the record of only five executive board meetings in its possession, the committee can document the appropriation of more than $2,000 to Communist causes. The committee finds this practice particularly reprehensible in view of the fact that this money came from dues paid by workers who sincerely believed they were strengthening legitimate labor objectives. Less than 5 percent of the workers represented by Communist union leadership are members of or sympathetic to the Communist Party. Therefore, 95 percent of the membership of such unions are loyal Americans unwillingly or unwittingly forced to help finance a subversive conspiracy whose ultimate aim would destroy the very concept of a free labor movement.

"Among the Communist organizations to which the District 9 executive board diverted workers' dues are the [fol. 245] National Negro Labor Council, which has been

cited as subversive by the Attorney General, and the Prisoners' Relief Committee, which solicited financial help for Communist Party leaders arrested under the Smith Act. District 9 also 'generously' gave away workers' money to such notorious individuals as Harry Bridges and Harold Christoffel. Harry Bridges had been seeking funds to fight deportation proceedings. Harold Christoffel was active with other Communists in the Allis-Chalmers strike, which attempted to sabotage war production during the Hitler-Stalin pact. He had sought funds to defend himself against a perjury conviction resulting from his appearance before the House Committee on Education and Labor. By no stretch of the imagination can these expenditures serve the interests of any worker or union.

"A number of present or former leaders in the affairs of UE District 9 were summoned to appear before the committee in public hearing in order to explore more fully the Communist abuse of the concept of unionism.

"Witnesses heard by the committee included: John T. Gojack, president of UE District 9; David Mates, a UE international organizer assigned to District 9; and Julia Jacobs, former secretary to John Gojack in Fort Wayne, [fol. 246] Ind., and at the time of her appearance office secretary of UE Local 931 in St. Joseph, Mich. These witnesses refused to answer all questions put to them by the committee regarding Communist influences in their union. All but one invoked the fifth amendment when questioned concerning charges regarding their own membership in the Communist Party.

"Mr. Gojack invoked the first amendment in abusive and contemptuous testimony before the committee, and the House of Representatives has formally requested the Department of Justice to institute legal proceedings against Mr. Gojack for contempt of Congress.

"The attitude of Mr. Gojack before the committee belied his professions of concern for the rights of organized labor. So does his record of energetic support of the Communist Party over a period of many years.

"Julia Jacobs, the office secretary of local 931, St. Joseph, Mich., is a Communist servitor whom the Communists have moved about at will. When she was identified as a Communist Party member in Ohio and her usefulness impaired, she was moved to Fort Wayne, Ind., where she became a

secretary to John Gojack. When need for a militant Communist became vital in St. Joseph, Mich., she was again moved. In St. Joseph, Mich., she devoted much of her effort [fol. 247] to deceiving workers into believing that support of the Communist Party and its members was support of the trade-union movement as a whole."

Mr. Donner: Your Honor, I didn't object to this document, because it is the annual report of the committee; but I want the record to show that I in no way acquiesce in the characterizations, opinions or conclusions of the report; that it is simply here to reflect the interests of the committee in the subject matter, and that is all.

The Court: I should think that would be implicit,——

Mr. Donner: Yes.

The Court: —that you didn't agree with the characterizations and——

Mr. Donner: For example, I am disturbed with the characterization of my client, which I think is pretty self-serving,——

The Court: Very well.

Mr. Donner: "David Mates, the UE international organizer."

The Court: Doesn't that end that part?

Mr. Hitz: No, sir; it goes on to the end of that particular heading, the next page.

The Court: All right.

A. (Continuing) "David Mates, the UE international [fol. 248] organizer, has been a Communist Party functionary for years. Evidence in the possession of the committee indicates that he was chairman of the Labor Commission of the Communist Party for Michigan. Mr. Mates was responsible for the employment of many Communists in union local offices. In this manner, the Communist Party always had informers in the midst of the workers.

"The committee has been trying to determine whether or not these informers are utilized by the Communist Party for the purpose of industrial espionage. The three aforementioned witnesses possess important knowledge which could assist the committee in its investigation of this type of Communist subversion. Their refusal to answer questions thwarted the legislative process to an extent only the witnesses themselves know. Fortunately, documents ob-

tained during the investigation added much to the knowledge which the Congress possesses on the international Communist conspiracy as it relates to the labor movement."

Mr. Hitz: Your Honor, I noted that we would like to have read pages 33, 34, and part of 35. I think we can dispense with that and now go to page 35, "Recommendations."

By Mr. Hitz:

Q. Would you please read through 1, through part 1 on page 35?

[fol. 249] A. Yes, sir.

"Recommendations

"The vast majority of the recommendations made by the Committee on Un-American Activities have been adopted or enacted into law. The committee notes, however, that no legislation in this field was completed during the first session of the present Congress despite certain measures which the committee believes deserve immediate attention and action.

"Until the courts have rendered a final determination on the constitutionality of the Internal Security Act of 1950, the committee does not believe it advisable to the Congress to undertake any broad new legislative action against the functioning of the Communist Party. The committee also prefers to observe the operation of the immunity statute enacted by the last Congress before making any further recommendations along this line.

"Nevertheless there are certain legislative and administrative steps which should be taken immediately in order to strengthen the hand of our Government in dealing with the Soviet conspiracy. Four of these measures have been previously recommended by the committee and are resubmitted with the urgent request that decisive action be taken before the conclusion of the 84th Congress:

[fol. 250] "1. Information obtained through surveillance by technical devices should be permitted as evidence in matters affecting the national security, with the provision that adequate safeguards are adopted to prevent any abuse of civil liberties."

Q. Now read 3 through 5, please.

A. "3. Persons bidding for a Government contract should be required to file an affidavit stating he is not now and has not been within the past 10 years a member of any organization advocating overthrow of the Government by force and violence.

"4. The statute of limitations on treason, espionage, sabotage, and other subversive activities should be amended. Bills introduced in the House and the Senate would amend the statute to permit prosecutions up to 15 years from the time of commission of a crime, instead of the 5 years now provided for.

"In addition, the committee urges the following legislative and administrative action in 1956:

"5. The statute of limitations for violation of section 1001 or section 1621 of title 18, United States Code, dealing with false statements in regard to subversive activities and connections, should be extended to 10 years from commission of the offense by employees of the United States or any [fol. 251] department or agency thereof, or any applicant for such employment."

Q. Page 36, page 8, sir.

A. "8. Procedures by which congressional committees seek legal redress against contemptuous witnesses should be streamlined in the manner proposed by H. R. 780. Court action frequently takes 1 to 2 years under the present cumbersome process which involves: Committee vote, a House resolution, formal application to the United States district attorney; grand jury indictment, and trial. Not only does the committee fail to obtain the information desired of the witness, but the witness often escapes punishment altogether. H. R. 780 permits congressional committees, by majority vote, to refer a defiant witness directly to the courts. If the court determines that a witness has been in contempt and he so continues, the witness may then be adjudged in contempt of the court itself. H. R. 780 has already been approved by the House and requires action by the Senate."

Q. Thank you, sir.

Mr. Hitz: Your Honor, that concludes what we particularly wish to emphasize in this exhibit. If Your Honor

continues with the trial this afternoon, we will rest now. If Your Honor is going to adjourn now, I would then like [fol. 252] to reserve my statement of resting until tomorrow morning.

The Court: He hasn't been cross-examined yet.

Mr. Hitz: Sorry, I——

The Court: I don't know whether there will be any, but there might.

I will adjourn now until tomorrow morning at ten o'clock.

The Witness: If the Court please, I would like to correct an error in my testimony,——

The Court: Very well.

The Witness: ——if I may be permitted to do so now.

The Court: Yes.

The Witness: I was asked the question this afternoon as to whether a committee release or information had been given by the committee prior to February 10th, that Mr. Gojack would be heard in the hearing which had been set for Fort Wayne.

I had a search made of the local newspapers prior to my appearance on the witness stand, and we had not found any instance, an instance in which that information had been made public. Therefore, I testified that it had not been done as far as I knew.

In checking again with my office during the afternoon recess, I find that a clipping has been found from a newspaper apparently printed in Fort Wayne, indicating that on the 9th day of February, the chairman of our committee [fol. 253] announced that the committee at a committee session had decided to conduct hearings at Fort Wayne and at Spokane, Washington. In the course of the article, it was stated that a committee source indicated that Mr. Mates and Mr. Gojack would be heard at the Fort Wayne hearings.

The Court: Very well.

Mr. Hitz: Thank you, sir.

Mr. Donner: That was February 9th?

The Witness: February 9th.

* * * * * * *

[fols. 254-255] **Transcript of Proceedings, May 2, 1956**

. . . . . .

[fol. 256] Thereupon, FRANK S. TAVENNER, the witness at the time of the previous day's adjournment, resumed the stand and was questioned and testified further as follows:

[fol. 257] Cross examination.

By Mr. Donner:

Q. Mr. Tavenner, you were counsel at the hearing at which Mr. Gojack testified; is that correct?

A. Yes, sir.

Q. In connection with that hearing, was there a motion filed on behalf of Mr. Gojack.

A. Yes, there was.

Q. Now I show you a document headed, "Statement of Objections to Hearing and Motion to Vacate Subpoenas," and two attachments, and ask you whether that is a copy of the motion which was filed.

A. I do not know, sir. I have never seen the motion.

The Court: Oh, that was the basis for your offering the motion?

Mr. Donner: Yes.

The Court: I thought it was a motion you were just making to me at the beginning of the case.

Mr. Donner: No, Your Honor.

The Court: You read it to me at the beginning of the case.

Mr. Donner: I read it to you just to indicate what the issues were.

The Court: Oh, I see.

By Mr. Donner:

[fol. 258] Q. You have not seen the motion?

A. No, sir.

Q. Do you know whether a copy of the motion is in the files of the committee?

A. I know that the motion was filed. I have never actually seen it, either it or a copy of it.

Mr. Donner: Well, Your Honor, we subpoenaed the motion and assumed that Mr. Tavenner would bring it with him.

By Mr. Donner:

Q. Do you have a copy of it here?
A. I do not.

Mr. Rein: Mr. Hitz does.

Mr. Hitz: I have a copy. If you will let me see yours I can see whether this is the same as the one I have in the file.

The Court: You ought to use the original.

Mr. Donner: Do you have the original?

Mr. Hitz: No, it is a copy.

Mr. Rein: Your Honor, the committee didn't have the original of the motion, but just a copy that they had made. I don't know why, but that is all they had in the committee files.

(Paper produced by Mr. Hitz)

Mr. Hitz: Did you have a question pending?

Mr. Donner: No, I don't.

[fol. 259] Mr. Hitz, is this a copy of a motion which was filed with the committee?

Mr. Hitz: I will concede that it is an accurate copy of the motion filed.

Mr. Donner: Together with the attachments?

Mr. Hitz: I don't know about the attachments. I have never seen those.

Mr. Donner: Well, here they are. (Displaying attachments) See, the body of the motion—

Mr. Hitz: I wonder if you could establish some of that through the witness. He may have seen the attachments, I don't know.

By Mr. Donner:

Q. Calling your attention to the motion itself, does the motion refer to any newspaper clippings, or does it quote from any newspaper clippings?

The Court: Well, it speaks for itself.

A. If you will point it out to me. I don't see it, on a hurried reading of it.

By Mr. Donner:

Q. (Indicating) I refer you to paragraph 1.

A. Yes, in paragraph 1, in the middle of paragraph 1 there is a reference to newspaper clippings being attached to the statement of objections.

Mr. Donner: Will Mr. Hitz concede that this motion and [fol. 260] the clippings are a copy of the motion which we filed with the committee?

Mr. Hitz: I would like to do it this way: I won't object to their authenticity or accuracy, so that I don't affirmatively concede anything, but I won't object to them on that ground. That will accomplish his purpose. I will have an objection, perhaps, to their relevancy and materiality, when that time comes.

The Court: As I understood you, Mr. Hitz, you said you would not object to the paper itself.

Mr. Hitz: That is right.

The Court: But that you couldn't make any concession as to the attachments. Then you asked counsel to make some inquiry of the witness.

Mr. Hitz: Yes.

The Court: That he hasn't yet done—concerning the attachments.

By Mr. Donner:

Q. Do you know whether these attachments—

Mr. Donner: I don't think the witness knows, Your Honor.

By Mr. Donner:

Q. Do you know whether these attachments were appended to the motion which was filed with the committee?

A. I am very sorry that I have no information on that [fol. 261] at all, because I never saw the motion, and therefore could not of my own knowledge make any statement about it. I didn't see it at the time; I haven't seen it since, until you handed it to me just now.

Mr. Donner: In view of that, Your Honor, I would like to get a stipulation from Mr. Hitz that this is a copy of a motion which was filed with the committee.

The Court: Well, he apparently agreed to that, but not to the attachments.

Mr. Donner: I think I also——

Mr. Hitz: I will make the same concession with respect to the attachments: namely, that we do not object to the motion and the attachments that Mr. Donner now has, as not being properly authenticated, and as being inaccurate. We make no such objection.

The Court: And you also concede that they were filed with the committee that morning?

Mr. Hitz: I do.

The Court: But you have some other objections?

Mr. Hitz: I will have an objection to materiality and relevancy if they are offered.

OFFER IN EVIDENCE

Mr. Donner: I now offer them, Your Honor.

The Court: Very well, will you mark them and clamp them together, Mr. Clerk, and I will hear Mr. Hitz on the objection based on relevancy.

[fol. 262] (Statement of Objections to Hearing, etc., with attachments, was marked as Defendant's Exhibit No. 3 for identification.)

The Deputy Clerk: Defendant's Exhibit No. 3 for identification.

The Court: Now let me have them, Mr. Clerk, please, as soon as you clamp them together.

The Deputy Clerk: I still don't have a stapler here, Judge.

The Court: Get the stapler from my office, Mr. Marshal, will you please?

Now, what is your objection, Mr. Hitz?

Mr. Hitz: I assume that they are being offered on the question of pertinency; or rather, the question of the lack of legislative purpose for this inquiry. Directing myself to that proposition, we assert that we believe them to be irrelevant and immaterial, because the utterances of members of the committee, their motives and their purpose as expressed in press releases, as reflected in newspapers, and as made in speeches is not itself relevant and material to a trial of this sort. That has been held numerous times. It has never been decided contrarywise to our position.

Your Honor quashed a subpoena calling for press releases, among other things, in the Trumbo case, and at that time the press releases and utterances of members of the [fol. 263] Un-American Activities Committee were sought by the defense, in order to show that exposure was the purpose of the committee rather than a legislative purpose. When that was made known, Your Honor immediately quashed the subpoenas, which of course is in advance, even of their being submitted in evidence. That was approved by the Court of Appeals.

The Court: I think the recent Watkins case touches on that point, too.

Mr. Hitz: The Watkins case, I think, is strong on that point. It says that such matters are not evidence; and of course, the meaning of them not being evidence is that they would not be admitted in evidence at the trial.

Mr. Donner: Your Honor, in the Watkins case, the trial judge excludede certain material because it did not concern that hearing, and the Court of Appeals in the Watkins case mentioned the fact that the material submitted did not relate to that hearing.

This relates to the hearing. It contains quotations by the chairman of the committee, and it is supported by a concession of the Government that those quotations are accurate.

Now, I submit that in that context, this throws light on whether or not there was a legislative purpose. Your Honor, as a lawyer I am almost overborne by the difficulty of trying to prove legislative purpose when you can never [fol. 264] go beyond what the committee says on the face of the record. Certainly, when a chairman of a committee announces in advance of a hearing that this and that is the purpose of a hearing, we are not inquiring into his motives; we are inquiring into what he said the hearing would be about. We are not saying that he believed Gojack to be a bad man. We are saying that this shows what the contemplated subject matter of the hearing was. And it was twofold: one, to put the UE out of business; and two, to show that Gojack and the other people subpoenaed were card-carrying Communists, and the rest would be up to the community.

Now, we are not probing their minds. We are taking statements that were made by the chairman of the comit-

tee in public and trying to put them in the record to show what this hearing was really about and what the purpose of it was, Your Honor. It seems to me that if it is at all possible, if it is at all possible to prove the absence of legislative purpose, this is valid, competent evidence to show the absence of legislative purpose.

The Court: Well, this is simply a motion or a statement of some kind filed at the hearing, which gives certain reasons which Gojack and two others have decided to bring before the committee as grounds for its inability to proceed. It is part of the proceedings. It seems to me it ought to be in the record. It isn't binding. It is a part [fol. 265] of the record, however.

For example, if Gojack at the hearing had made these statements, certainly they would go in evidence just as you put in evidence all the other statements that he made. Wouldn't it?

Mr. Hitz: Well, yes; but since he didn't do it, I don't think it is part of the record.

The Court: But prior to the hearing his attorney did it. This is signed, "Frank J. Donner, Counsel for" two others and Gojack.

Mr. Donner: Page 20, Your Honor, of the record of the proceeding, the committee reported the fact that,

"Let the record show that the motion by counsel is duly filed";

and that was that motion.

The Court: Then it is part of the record.

Mr. Hitz: It may be part of the record, but it still should be relevant and have some weight, to be material in this trial. I have some law on it.

The Court: I think it is relevant as to what took place. Now, if Gojack had announced, first,

"I question the constitutional validity of the committee under the First Amendment,"

as he has done in this motion; second,

"I question its legislative purpose";

[fol. 266] third,

"I question the pertinency of inquiries which are about to be made of me. On those grounds, Mr. Chairman, I refuse to answer,"

then if the chairman said,

"Those are not sufficient under the law as I understand the law. You must answer, Mr. Gojack,"

and then he refuses, his record is made. Then it is up to the courts to determine pertinency, legislative purpose, validity of the statute creating the committee, et cetera.

Why isn't that relevant to a determination of these issues?

Mr. Hitz: Because he didn't say it there. His attorney said it; and if he had filed——

The Court: He said things to the effect that he relied on the First Amendment. He said that repeatedly.

Mr. Donner: And he also said there was no legislative purpose.

The Court: I am sure he said that also.

Noy, I don't understand your position, Mr. Hitz, that this is not relevant, simply because it was made in advance of the time he took the witness stand.

Mr. Hitz: Well, in addition to that, he didn't make it.

The Court: His attorney made it. Certainly he can speak through his attorney, can't he?

[fol. 267] Mr. Hitz: Well, the purpose for which it is being offered here is not a purpose for which he could either have made a statement at the time of the hearing or can now, as a defense for refusing to answer. He is endeavoring to show that there was a purpose to harass and punish and to expose, as a reason for his not giving the testimony to the committee.

The Court: His mere statement doesn't prove it.

Mr. Hitz: Oh, no; but the cases have held that that evidence, attempting to prove harassment, exposure, and that the purpose was to punish, has uniformly and without exception been excluded in trials of these cases, once they come into court.

The Court: I think that the courts have held they should not be considered as binding on the committee, not that they shouldn't be received in evidence.

Mr. Hitz: I am sorry, Your Honor. I have a case directly in point on that subject.

The Court: All right, I will hear your case.

Mr. Hitz: In the Dennis case, in our Court of Appeals, the court said:

"Once the rule has been established"——

The Court: Now, will you let me get the Dennis case. What is the citation?

Will you get it for me, Mr. Marshal?

[fol. 268] Mr. Hitz: I think it is 167 Fed. 2nd; and shortly I will ask the Court to consider the Eisler case, which is 170 Fed. 2nd. Perhaps the Court would care to send for that at the same time.

The Court: Very well, will you get those two books? Dennis is October 12, 1948. That is the date of it.

Mr. Hitz: I am not certain of the Dennis case.

The Deputy Marshal: That is 170, Mr. Hitz?

Mr. Hitz: I think it is 167, Mr. Marshal; but at any rate, 170 is the next case I will refer to.

The Court: My difficulty is I cannot see the distinction between Mr. Gojack's saying this at the time he is on the witness stand and his attorney's saying it for him prior to the time he takes the witness stand. His saying these things does not necessarily prove the fact. It does not necessarily mean that there was no legislative purpose. It is just a part of the evidence in the case. But I will hear you.

Mr. Hitz: Does Your Honor care to have me wait until the books arrive, or shall I proceed?

The Court: You may proceed now if you are able to do so.

Mr. Hitz: Well, I was reading a quotation from the case. May I continue to do that?

The Court: All right.

[fol. 269] Mr. Hitz: This, Your Honor, is not a digest of the case. This is a quotation from it:

"Once the rule has been established that the creation of the committee was within the constitutional powers of the Congress, as has been well established by the three cases quote above,"——

and above, the court cited the Josephson case, the Barsky case, and the Eisler contempt case——

"it is neither the business nor the prerogative of this court or any other court to pass upon either the wisdom

of Congress in setting up the committee, the private or public character of members of the committee, or the propriety of the procedure of the committee, unless it transgresses the authority committed to it by the Congress under the Constitution."

(Deputy Marshal returns with law books for the Court.)

The Court: I don't see how that differs from what I said.

Mr. Hitz: Well, "the public or private character of the members" is the part of the quotation which I think is important here; and other cases have expanded and defined this a little bit more to the point of our case, to also include public utterances.

The Court: Now, that is something else again. I think that is in the second Watkins case. But isn't it all part of [fol. 270] the evidence of the case?

Mr. Hitz: In the Barsky case, which is in 167 Fed. 2nd, and at page 251 thereof, the Court said:

"The mere attitude of the committee is not for the court . . ."

I think that is coming closer to our situation here, that these public utterances and press releases by members of the committee are in an endeavor to reflect the attitude of th committee to show that they were not in a legislative field and for a legislative purpose, but to expose.

In the Eisler case, 170 Fed. 2nd at page 279, the court said:

". . . the court had no authority to scrutinize the motives of Congress or one of its committees."

The court went on and refused, or the trial court had refused to admit evidence that the committee's real purpose was

"to harass and punish him for his political beliefs, . . . and that the committee acted for ulterior motives not within the scope of its or Congress' powers."

The Court: I have no quarrel with that. This isn't evidence that the chairman of the committee attempted to harass or punish Gojack. This is evidence of what Gojack, through his attorney, said to the committee, as bearing on his subsequent refusal or failure to answer.

Mr. Hitz: Well, I will meet that by suggesting this, Your [fol. 271] Honor: that everything that the defendant says as a witness before the committee is not thereby admissible in evidence at his trial. It must bear upon——

The Court: You put in everything.

Mr. Hitz: Well, I put in what happened to be there. But if he made a long speech, if he appended a legal brief to his appearance, that would not be admissible.

In the Eisler case, Mr. Eisler presented to the committee a very lengthy mimeographed statement. He refused to the committee to be sworn until he had been allowed to read that. They wouldn't permit him to read it, and he wouldn't be sworn, and there was the case.

The Court: That was never received by the committee. This was received by the committee.

Mr. Hitz: Well, just because he said it or did it through his attorney wouldn't make it admissible unless it bore upon an element of proof or a matter of defense in the case.

The Court: Suppose he said in here,

"I refuse to answer on the ground that my answers might tend to incriminate me"?

Mr. Hitz: It would be admissible in this trial.

The Court: Of course it would, because that is a good reason for not answering. It is a legal reason for not answering.

[fol. 272] Now, he contends that he has legal reasons for not answering: namely, among others, the First Amendment. Now, whether that is or is not is a matter which I dare say you will argue before the case is completed. I notice in the Quinn case that the Chief Justice said it was not necessary to reach that point.

(sic) Mr. Hitz: Well, I would of course concede that the Fifth Amendment reason would be admissible, but it wouldn't be admissible because the defendant said it. It would be admissible because it bore upon a legitimate defense in the trial. There is no magic to him uttering words before the committee.

The Court: Of course not, but if he doesn't utter the words, he waives his defense of the Fifth Amendment, Mr. Hitz.

Mr. Hitz: Quite right.

The Court: Therefore, it would be admissible as showing what he said.

Mr. Hitz: Well, it would still, in my opinion—Well, furthermore, the purpose for this offer here is to show what the committee was supposed to have said through its members at various times to indicate exposure rather than a legislative purpose. The First Amendment proposition has already been made by Mr. Gojack. It is in evidence in this case.

[fol. 273] The Court: Yes, but there is no reason why it should not be stated again, if it was stated again.

Mr. Hitz: Well, that isn't the purpose of the offer, as I understand it.

The Court: The purpose was not stated. It was simply offered. As I recall what Mr. Donner said, he offered it.

Mr. Hitz: Well, I will object, Your Honor, to that portion of it that contains exposure and other similar quotations from members of the committee. I concede that what he said with reference to the First Amendment might be cumulative of his statements before the committee.

The Court: Well, I will receive it as part of the proceedings before the committee.

(Defendant's Exhibit No. 3 was received in evidence.)

Mr. Donner: Your Honor, may the record be clear that the Government does not dispute the accuracy of the quotations attributed to Chairman Walter in both of those clippings.

The Court: Oh, I didn't understand the Government to say that at all, because the Government disputed it yesterday. When this witness, the newspaper man took the stand, the Government read back from the stenographic transcript which was produced after the witness took the stand, and I am sure that there is a reasonable inference there [fol. 274] that what the newspaper man said, whose name I have forgotten, was his translation, was his summary of what he heard take place.

You didn't agree, did you, Mr. Hitz, that those quotations, alleged quotations in the newspaper article, were accurate quotations?

Mr. Hitz: I would like to see them again, Your Honor.

Mr. Donner: Here is the one from the Michigan paper. (Handing to Mr. Hitz)

The Court: Because the quotations speak of busting, and the stenographic transcript doesn't say busting a union, as I recall it.

Mr. Hitz: Your Honor, we do not contest the accuracy of the clipping in the Herald-Press of St. Joseph, Michigan, of February 21, 1955, which is one of the two clippings attached to the statement that was filed by the attorney before the committee.

The Court: You mean that you agree that the member of the committee made the statement as set forth therein?

Mr. Hitz: I do not contest its accuracy. The effect of it is what you say.

The Court: You mean that that is an accurate quotation, when it is different from what is in the stenographic transcript?

Mr. Hitz: It isn't different. It is an entirely different clipping, Your Honor. There are two clippings attached [fol. 275] to the motion. My statement that I do not contest the accuracy of one of them relates only to that one, and it is not a statement that it is an accurate quotation. I do not contest the accuracy. There is a difference of emphasis there.

(Papers handed up to Court)

The Court: Well, you were not very clear to me when you made your stipulation.

Now, in one of them, this statement appears as a quotation from Mr. Walter:

"Nobody on this committee is interested in busting unions . . . we all have records . . . but all of us are interested in your union going out of business because it is not good for the United States."

Now, is that in accordance with the stenographic transcript?

Mr. Hitz: It is not, sir.

The Court: Then you don't agree to that.

Mr. Hitz: I do not. My stipulation only relates to the other one. It never did relate to both of them.

The Court: Oh, I understood you agreed to both of them.

You only agree to the Herald-Press of St. Joseph, Michigan?

Mr. Hitz: Yes, Your Honor, that is the stipulation.

The Court: All right.

[fol. 276] Mr. Donner: Very well. I renew my offer, Your Honor.

The Court: Your offer of what?

Mr. Donner: Of the entire motion and the attachments.

The Court: Well, they have been received in evidence.

Mr. Donner: Very well, Your Honor.

The Court: Subject to the stipulations.

Mr. Donner: Yes, Your Honor.

By Mr. Donner:

Q. Mr. Tavenner, taking you back again to the transcript, page 20,—

Mr. Hitz: Is that the report or the full transcript?

Mr. Donner: I am sorry, Mr. Hitz; that is the full transcript.

By Mr. Donner:

Q. (Continuing)—you will recall that Mr. Moulder says: "You may file the motion."

Now, do you recall whether I physically handed you that motion?

A. Yes, sir, I do. You handed me the motion and I handed it up to the chairman.

Q. And you don't know what happened to it after that?

A. Yes, I know that during the progress of the hearing the chairman made some announcement in regard to it. My recollection is that he announced that the committee had [fol. 277] considered it and denied it.

Q. Were you present when the committee considered it?

A. I was present, but took no part in it, as this happened while the committee was in session, and during the period that I was either examining a witness or preparing to examine one.

Q. Now, calling your attention to the annual report of the committee, Government Exhibit 10, at page 1, that is the annual report for 1955,—

A. Yes, sir.

Q. (Continuing)—do you see, about five lines or six lines from the bottom, at the opening of each public hearing, the presiding chairman clearly outlined the purpose of the investigation and hearing?

The Court: Is this page 10?

Mr. Donner: This is page 1, Your Honor, of Government Exhibit 10.

A. Yes, sir.

By Mr. Donner:

Q. That practice, of course, governed the hearing in which Mr. Gojack was involved; isn't that correct?

A. Yes.

Q. Is that practice pursuant to some rule that has been adopted by the committee?

A. No, there has been no rule adopted by the committee.

[fol. 278] Mr. Donner: Will you mark this.

A. (Continuing)—as of this time.

(Rules of Procedure booklet was marked as Defendant's Exhibit No. 4 for identification.)

The Deputy Clerk: Defendant's Exhibit No. 4 for identification.

By Mr. Donner:

Q. I show you Defendant's Exhibit 4 for identification and ask you what that is.

A. This is a set of printed rules of the Committee on Un-American Activities.

Q. Will you tell me when that was adopted?

A. In July 1953.

Q. Did that govern the hearings in this case?

A. Yes, it did.

Offer in Evidence

Mr. Donner: I offer this, Your Honor.

Mr. Hitz: No objection.

The Court: Will you read to me what you think is—

Mr. Donner: Yes, I will, Your Honor. I want to read Rule 2, the "Subjects of Investigation." Would you prefer to have the witness read it, Your Honor?

The Court: No, I—

Mr. Donner: "The subject of any investigation in connection with which witnesses are summoned or shall otherwise appear shall be announced in an opening statement to the Committee before the commencement of any hearings; and the information sought to be elicited at the hearings shall be relevant and germane to the subject as so stated."

[fol. 279]

The Court: The exhibit will be received.

(Defendant's Exhibit No. 4 was received in evidence.)

By Mr. Donner:

Q. Now, the committee's annual report in 1954—that is Government Exhibit 7—and the annual report in 1955, Government Exhibit 9, both make reference, do they not, to a file and reference service?

A. Yes, sir.

Q. The committee maintains a service dealing with people in whom it is interested; is that correct? That is, its files contain dossiers or records of people in whom it is interested?

A. Well, I don't know what you mean by "in whom it is interested." It maintains a considerable file of information relating to so-called un-American activities and other matters.

Q. And it has a file covering individuals, isn't that correct?

A. Individuals are referred to in the files.

Q. How many individuals are covered in those files?

[fol. 280]

A. I have no idea.

Q. Can you approximate it?

A. No.

Q. Would you say there were five thousand?

A. Oh, I assume it is a very large number, much larger than that.

Q. Does the committee, on request, make available material in these files to people who inquire about it?

A. No, not generally

Q. Well, to whom does it make this material available?

A. It makes it available to all investigative agencies of the Federal and the State governments, and to members of Congress.

Q. If I wrote to the committee and asked for information on John Jones, whether you have any information as to whether he has a subversive background, would you send me a reply?

A. No, sir.

Q. If I wrote to my Congressman and asked him to get the information about John Jones,—

A. If the Congressman advised the committee that he desired information, the Congressman would be furnished certain information from the public records and files of the committee, not investigative information.

Mr. Donner: Will you mark this, please; and this.

[fol. 281] (Printed report dated 5/5/53 was marked as Defendant's Exhibit No. 5 for identification.)

The Deputy Clerk: Defendant's Exhibit No. 5 for identification.

This, too?

Mr. Donner: Yes, please.

(Report dated 8/20/53 was marked as Defendant's Exhibit No. 6 for identification.)

The Defendant: Defendant's Exhibit No. 6 for identification.

By Mr. Donner:

Q. I show you Defendant's Exhibit 5 for identification and ask you what this is, Mr. Tavenner.

A. This appears to be a report made by the Committee on Un-American Activities. You asked me to look into it on the first day of my appearance here, and I find that on May 5th, 1953, this information was given to a member of Congress.

Q. Do you know what member of Congress it was given to?

A. No, I do not.

Q. By the way, who was the subject of that report?

A. John Thomas Gojack.

Q. Can you tell me how many requests you have for information in your files about Mr. Gojack?

[fol. 282] A. No, sir.

Q. Does the committee keep a record of that?

A. It keeps a record of the requests that it obtains, yes.

Q. Can you find that out without too much trouble?

A. Well, I think I can.

Q. Very well; I would like you to do that.

Now, then, this is a copy of a document drawn from the files of the committee; is that right?

A. I recognize that this is a document prepared by the staff of the Committee on Un-American Activities.

Q. How many pages does it contain?

A. Three pages.

Q. I show you Defendant's Exhibit 6 for identification and ask you what that is—ignoring, of course, the underlining.

A. Yes, I am paying no attention to that.

Yes, sir, I can identify this as apparently a copy of a document or report prepared by the Committee on Un-American Activities.

Q. Is the second document, that is, Defendant's Exhibit 6 for identification, larger, does it contain more information than 5?

A. It does not.

Q. Does it contain the same amount of information?

[fol. 283] A. The only difference between the two reports is that the second report, the one you have just now handed to me, bearing date of August 20, 1953, contains a paragraph—the first paragraph, which is not contained in the earlier report of May 5th. I may explain that by this statement: that this paragraph referred to says that the documents were obtained from the public records and files and publications of the committee; that it is not construed as representing the results of an investigation by the committee, nor findings of the committee; it should be noted that the individual referred to is not necessarily Communist, a Communist sympathizer, or a fellow traveler, unless otherwise indicated.

This type of a description prior to the middle of 1953 was usually contained in the letter forwarding the report to the Congressman, but in 1953, the practice was adopted of making this a part of the report itself.

Q. And since then, that practice has been abandoned, is that it? It is now included in a covering letter; is that right?

A. It is now included in the report instead of in a covering letter.

Q. I see.

A. That is the only difference, with the exception of the language in the first sentence of the second paragraph.

[fol. 284] Q. Now, does the committee— Of course, the committee constantly adds to the information in its files; is that correct?

A. Sometimes it does and sometimes it doesn't.

Q. Whenever information becomes available?

A. It depends entirely upon the character of the information.

Q. In other words, it would be possible now for some Congressman to request the committee to give him material on Mr. Gojack which would be larger in volume than what you have here?

A. There would be a reference now to his testimony before the committee.

Q. Is the caption of these two exhibits a caption which is from the committee's stationery, information from the files?

A. Yes.

Q. Would you say that is a reproduction, a physical reproduction of what was transmitted to the person who requested the information?

A. I am not certain. I am certain as to Exhibit No. 6. I believe it to be as to Exhibit No. 5.

Mr. Donner: I would like to offer these, Your Honor, of course without the underscoring.

Mr. Hitz: We object to the relevancy and the materiality.

[fol. 285] (Documents being handed up to Court)

Mr. Donner: Just a minute. I am not offering this page at this time. (Removing page from document)

The Court: What is the relevancy of these?

Mr. Donner: Your Honor, the purpose of this is to show first that the committee had information about Mr. Gojack; second, that this is part of an exposure pattern; that making this information available to the public through a Congressman invites the generation of private sanctions against the individual, and that is a form of exposure.

The Court: Unless I am wrong on the law—and I hope you will correct me if I am wrong—as I understand it, if

exposure is incidental or ancillary to a valid legislative purpose within the confines and boundaries of the resolution or statute creating the committee, that does not invalidate the committee's action.

Mr. Donner: I agree with you, Your Honor.

The Court: Am I wrong on that?

Mr. Donner: No, Your Honor, I agree with you. But my point is that this, considered together with the other evidence in the case, shows that exposure was a primary purpose.

The Court: I sustain the objection.

Mr. Donner: I will have further use for one of these.

The Court: All right.

[fol. 286] By Mr. Donner:

Q. Now, Mr. Tavenner, you referred yesterday to the fact that the committee issued a release stating that the committee would hold hearings in Fort Wayne. Is that correct?

A. I do not believe I described it that way. The committee did not issue a release, but we found a newspaper clipping quoting a statement made by the chairman with regard to the matter. There was no committee release prepared that I am able to find or learn anything about.

Q. That statement was made on February 9th. Was the paper dated February 9th?

A. That I do not recall.

Q. I think you testified yesterday that it was dated February 9th.

A. I testified that it had appeared on February 9th, I believe, yes.

Q. Yes.

Now, when was Mr. Gojack subpoenaed?

A. The subpoena was dated February 10th. Service was obtained on February 15th.

Q. Is it a practice of the committee to announce in advance that people will be subpoenaed before they receive the subpoena?

A. It is not the practice. It has occurred.

[fol. 287] And my recollection of the article in this case did not quote the chairman as saying that Mr. Gojack had been subpoenaed.

Mr. Donner: I don't believe there is a question pending, Your Honor.

The Witness: It is an explanation.

The Court: What was the question?

(The reporter read the last question and answer.)

Mr. Donner: I move that the last part of the answer be stricken.

The Court: It will be stricken. Mr. Hitz can bring it out on redirect, however, if he so desires.

My Mr. Donner:

Q. You remember yesterday you testified about a letter which you read into the record, dealing with the Paris metal workers' union. You recall that?

A. Yes, I do.

Q. You said that that letter was turned over to the committee by a police agency.

A. Yes, sir.

Q. Can you tell me what police agency turned that letter over?

A. I do not know just which it was. I do not know what city.

Q. You mean it was a local police agency in some city?

A. That is the information that I had, yes.

[fols. 288-290] Q. Can you verify what city that was?

A. Yes, I can verify it.

. . . . . .

[fol. 291] Thereupon George David McClaren was called as a witness by counsel for the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Donner:

Q. What is your full name, please?

A. George David McClaren.

Mr. Hitz: I didn't get the middle name or initial.

Mr. Donner: David.

My Mr. Donner:

Q. What is your address, sir?

A. Rural Route 1, Grabill, Indiana.

Q. What is your occupation?

A. I am director of industrial relations for the Magnavox Company.

Q. How long have you had that position?

A. About five and a half years.

The Court: Keep your voice up, Mr. McClaren.

By Mr. Donner:

Q. Do you know whether the United Electrical, Radio and Machine Workers has ever been a bargaining agent at the Magnavox Company?

A. Yes, it has been.

[fol. 292] Q. Do you know for how long it was a bargaining agent?

A. I think about seventeen years.

Q. Did there come a time when it ceased to be the bargaining agent in the plant?

A. Yes.

Q. Can you tell me when that was?

A. February or March of last year.

Q. Of 1955?

A. Right.

Q. An election was held at that time?

A. That is correct.

Q. And a rival union superseded the United Electrical, Radio and Machine Workers?

A. That is right.

Q. Do you recall when that election was held?

A. I think it was either in February or March of last year.

Q. Do you know whether there was a run-off election held in connection with that election?

A. There was.

Q. That is, the first election was inconclusive?

A. That is right.

Q. And a second election was held.

A. That is right.

Q. And in that election the bargaining agent, the agent

[fol. 293] that had been up to that time the bargaining agent was defeated in a run-off election?

A. That is right.

Q. That run-off election took place sometime in March, did it not?

A. I believe that is correct.

Q. Do you know the defendant John T. Gojack?

A. Yes.

Q. Have you ever participated in a negotiations with him?

A. Yes.

Q. He is an official, an officer of the District 9 of the United Electrical Workers; isn't that right?

A. That is right.

Q. Did you ever have occasion to circulate in the plant material obtained from the files of the House Un-American Activities Committee, dealing with Mr. Gojack?

A. Such information was circulated to department heads and factory supervision.

Mr. Donner: Will you mark this covering letter, please.

(Covering letter of 10/6/53 was marked as Defendant's Exhibit No. 5-A for identification.)

The Deputy Clerk: Defendant's Exhibit No. 5-A for identification.

Mr. Hitz: Is this a new exhibit?

[fol. 294] Mr. Donner: Yes.

By Mr. Donner:

Q. I show you a document that has been marked Defendant's Exhibit No. 5-A and ask you what that is.

A. This is a copy of a circular sent from my office to all of the department heads and foremen.

Q. What is the circular to which it is attached?

A. The circular to which it is attached is a report, a copy of a report from the files of the Committee on Un-American Activities.

Q. Mr. McClaren, how did you obtain that copy?

A. Through the Congressman from our district.

Q. What is his name?

A. Ross Adair.

Q. Did you ask Congressman Adair to get this for you?

A. My assistant, on my instructions, asked Congressman Adair to get it.

Q. And you had the information which you received duplicated; is that correct?

A. That is correct.

Q. Verbatim?

A. That is right.

Q. How many copies did you have duplicated?

Mr. Hitz: Excuse me, sir. Please let me make objection. I do object. I think this is irrelevant and immaterial.

[fol. 295] The Court: I don't see its relevancy. What is it? A copy of that Exhibit 5?

Mr. Donner: Yes, Your Honor.

The Court: Let me look at it, Mr. Witness. (Inspecting papers)

Mr. Hitz: Mr. Donner, is 5-A a copy of 5, or is 5-A merely the circular from Mr. McClaren's office?

Mr. Donner: 5-A is the circular, sir.

The Court: In addition to everything else, it appears to have been circulated October 6, 1953.

Mr. Donner: Yes, Your Honor.

The Court: I sustain the objection.

By Mr. Donner:

Q. Can you tell me this: Subsequent to October 6, 1953, did you ask your Congressman to get any supplementary or later reports on Mr. Gojack?

A. No.

Mr. Hitz: I'm sorry, don't answer until I have a chance to object.

And I do object. Same reason.

The Court: Well, that is preliminary to something else, isn't it?

Mr. Donner: Yes. I wanted to——

The Court: I overrule the objection.

Mr. Donner: I wanted to cure Your Honor's——

[fol. 296] The Court: Oh, that was only one point. I said in addition to everything else.

Mr. Donner: I am sorry, Your Honor.

The Court: You may answer the question.

The Witness: No.

By Mr. Donner:

Q. Did you, subsequent to 1953, obtain reports on any other union officials?

Mr. Hitz: I object. Irrelevant.
The Court: Overruled.

A. Not that I remember.

By Mr. Donner:

Q. Could you have?

(sic) The Court: Sustained.

By Mr. Donner:

Q. Now, when did you first learn that Mr. Gojack was subpoenaed in this case?

Mr. Hitz: I object. Immaterial and irrelevant.
The Court: Sustained.
Mr. Donner: Your Honor, for the record I would like to re-offer 5 and 5-A.
The Court: You have not offered it.

OFFERS IN EVIDENCE

Mr. Donner: I now offer, re-offer, offer 5 and 5-A. I'm sorry.
The Court: Is there an objection?
[fol. 297] Mr. Hitz: We object to it.

• • • • • • •

[fol. 298] Mr. Donner: Exhibit No. 5 is a statement headed "Information from the Files of the Committee on Un-American Activities, U. S. House of Representatives," and dated May 5, 1953. Attached to Exhibit No. 5 is Defendant's Exhibit No. 5-A for identification, which is a circular from G. D. McClaren, dated October 6, 1953, to all department heads and foremen, and signed "George D. McClaren."
The Court: Do you wish to tender that evidence, or——
[fol. 299] Mr. Donner: Yes, Your Honor.
Mr. Pollitt: Your Honor, at this time I would like to tender some evidence similar to the evidence offered in the

Watkins case. Procedurally, I think the better way to do it would be to read——

The Court: I have the pamphlet, the decision of the Watkins case, on my desk. Will you get it for me? (Addressing Deputy Marshal)

Mr. Hitz: I have one here, Your Honor. I brought one for you.

The Court: Get mine for me, because I have that marked up.

Go ahead.

Mr. Pollitt: This material consists of congressional material, extracts from congressional material, and certain newspaper material. Procedurally, I think the best way to do it would be to offer the extracts from these reports, putting the document itself in the record, and then with permission to withdraw later and substitute photostats of the actual material offered.

The Court: Is that agreeable, Mr. Hitz?

Mr. Hitz: Yes, Your Honor.

The Court: Why doesn't that lectern get moved around where it belongs? Then he will have room to put his papers. Keep it there, Mr. Clerk. Now you will have room to put [fol. 300] your papers on the lectern.

Mr. Pollitt: The first offer is——

The Court: Just have it marked as an exhibit and then offer it.

Mr. Pollitt: This one is already an exhibit, Your Honor.

The Court: Well, if it is in, you don't need to offer it again.

Mr. Pollitt: Yes, you are right.

Mr. Hitz: What is it, Mr. Pollitt?

Mr. Pollitt: The 1954 committee report, which I believe is Government Exhibit 7. At this time we would like to call the attention of the Court to page 3 of the report, to the fourth full paragraph beginning "In addition to the hearings and reports of the committee during 1954."

The Court: What page is that?

Mr. Pollitt: Page 3, the annual report of the committee.

The Court: For 1954?

Mr. Pollitt: For '54.

The Court: All right.

Mr. Pollitt: "In addition to the hearings and reports of

the committee during 1954, there has been continued the singularly valuable service provided to Members of Congress, congressional committees, and duly authorized agencies of the Federal Government by the committee's [fol. 301] files and reference service. With the ever-increased interest aroused by the expanded knowledge of subversive activities, there has been a proportionate increase in requests for information from the committee."

And then on page 10, the first and second full textual paragraphs:

"The committee has become increasingly aware of the ability of former members of the Communist Party to transfer their domicile more or less at will in an attempt to escape investigation and/or directly testifying before the committee.

"Such is the case of one Lillian Brill Clott, an employee of the Hungarian People's Republic while in Washington, D. C., who was able to obtain employment in Columbus, Ohio, with a public relations firm, after being identified as a former member of the Communist Party by Mary Stalcup Markward. Her refusal to answer any and all questions relating to present or past membership in the Communist Party identified her with the several hundred others who have appeared before the committee in the past year and answered similarly."

On page 14, at the bottom of the page, the paragraph running over to page 15:

"These hearings could be properly considered as a continuation of the hearings which the Committee on Un-[fol. 302] American Activities held in Detroit, Mich., in 1952. As a matter of fact, in 1952 the committee reported that during its investigation the identity of over 600 individuals as Communist Party members was obtained."

On page 17, the second full paragraph—I beg your pardon; the first full paragraph:

"During the committee's investigation, it uncovered members of the Communist Party holding influential positions in the school systems of Detroit and other communities. Most of the teachers subpoenaed before the committee refused to answer questions with respect to their membership in the Communist Party, on the ground that to do so would

tend to incriminate them. Most of the teachers called have been suspended or permanently removed from their positions. The Committee on Un-American Activities approves of this action because the committee has found that the delivery of a student into the tutelage of a member of the Communist Party has been responsible for the destruction of thousands of American homes."

The next—would you mark this.

(1953 Annual Report was marked as Defendant's Exhibit No. 7 for identification.)

The Deputy Clerk: Defendant's Exhibit No. 7 for identification.

[fol. 303] Mr. Pollitt: Your Honor, this is the annual report of the Committee on Un-American Activities for 1953. I am offering only, as I said, certain extracts from this, which I would like to read to the Court.

The Court: Is there any objection?

Mr. Hitz: Yes, Your Honor. If this is on the question of exposure and lack of legislative purpose, we object to it, because the cases have held that not to be a proper matter for the reception of evidence.

The Court: What is it? Let me have it. (Inspecting document)

This is your own report, Mr. Hitz.

Mr. Hitz: That is right.

The Court: Well, you offered it for 1954, 1955; and you object to it for 1953?

Mr. Hitz: I do.

The Court: Overruled.

(Defendant's Exhibit No. 7 was received in evidence.)

Mr. Pollitt: On page 1, material beginning,

"From witnesses testifying under oath before the committee, approximately 100 names of teachers past and present who were members of the Communist Party were received. In this connection it should be pointed out that there was no instance in which the committee endeavored [fol. 304] in any way to ascertain the curricula of any school or to in any manner examine classroom procedures or the teaching methods of an educator. The focal point of the investigation into the general area of education was to

the individual who had been identified as a past or present member of the Communist Party."

On page 3, the last paragraph beginning on page 3 and running over to the top of page 4:

"The House Committee on Un-American Activities has remained vigilant to determine whether there are any individuals now employed by the United States Government who are present or past members of subversive organizations. In the hearings conducted by the subcommittee in Albany, New York, testimony was received from two former members of the Communist Party that the Commissioner of the Federal Mediation and Conciliation Service in Cincinnati, Ohio, had been known to them as a member of the Communist Party. In the investigation of this matter it was determined that this Federal employee, James F. McNamara, had, on the basis of previous investigation by the Federal Bureau of Investigation, been given three loyalty hearings to determine his suitability to continue in Government service. On all three occasions McNamara had denied that he had ever been a member of the Communist Party, and in the face of FBI information to the contrary, he [fol. 305] was cleared. Shortly after he had been served with a subpoena to appear before the committee, McNamara submitted his resignation to the Federal Mediation and Conciliation Service. When he did appear, McNamara admitted that he had been a member of the Communist Party and had broken with it some years ago. The committee believes it to be a fact that James F. McNamara did break with the Communist Party as he stated under oath. However, his case serves as an example of the continuing necessity for the work being performed by the House Committee on Un-American Activities. The Federal Bureau of Investigation had conducted a thorough inquiry and had in due course reported the results of its investigations to the proper authorities. However, in the face of the FBI reports, no further steps were taken by the agency concerned, and it was not until investigation by this committee that the true facts were determined and McNamara's employment terminated." On page 27, the third full paragraph:

"During 1953, the committee released testimony that had

been taken from Larry Parks in executive sessions on March 21, 1951. In the course of its questioning, Mr. Parks was asked about numerous individuals prominent in the motion picture industry. This fact should not be con- [fol. 306] strued as an identification of these individuals as members of the Communist Party unless subsequent testimony has established such identification."

Mr. Hitz. What page was that Mr. Pollitt?

Mr. Pollitt: That was on page 27.

On page 60, the first full textual paragraph on the page:

"It would be a great step in the progress of the committee's work if all persons who find themselves in circumstances similar to those of Artie Shaw would realize that all they need to do is communicate with the committee, the chairman or its members, in order to clarify or elaborate on any information the committee possesses relative to themselves."

Page 99, the full material contained on that page, headed, "G. Bromley Oxnam."

"The Reverend G. Bromley Oxnam is Bishop of the Methodist Church for the Washington, D. C. area. On July 21, 1953, Bishop Oxnam appeared before the committee as a result of a request by him that he be heard. Bishop Oxnam informed the committee that certain information in the committee files relating to him was in error. As in every instance of this kind where a person feels that there is erroneous information or information which might require [fol. 307] clarification, the committee is pleased to take every reasonable step to insure that the information is corrected or clarified. In fact, Bishop Oxnam had been extended an invitation to appear before the committee as early as October 1951. The committee believes that the full record of the hearing afforded Bishop Oxnam will now serve to correct and clarify any erroneous information that might have been contained in the files relating to him."

And on page 127, the section of the report headed "Consumers Union":

"It will be noted in other sections of this report that the committee has made every effort to alert individuals and

organizations who feel that their names are unjustly reflected in the committee's records or testimony to communicate with the committee to rectify or clarify their position. A very tangible example of the success that the committee has gained in these efforts relates to the Consumers Union, which is the publisher of Consumers Reports. This organization on the basis of information in the committee records had been cited by the Special Committee on Un-American Activities in 1944. Steps were initiated by Consumers Union through its officers and legal counsel to clarify this situation. After hearings and thorough study the com- [fol. 308] mittee finds there is no present justification for continuing this organization as one that is cited, and future reports and publications will reflect that this organization has been deleted from the list of subversive organizations and publications. It cannot be pointed out too frequently that the fact that an organization has been cited as subversive or as a Communist front does not mean that such citation is irrevocable. Steps such as those taken by Consumers Union can lead to a proper clarification by the committee."

And on pages 132 and 133, the full text of both pages:

"Files and Reference Service

"For a number of years this committee has maintained a specialized reference service in the field of subversive activities insofar as furnishing any information that may appear on a given subject in the committee's own public records, files and publications. This service is available at present only to Members of Congress, the representatives of the Executive Branch of the Government, and of course, to all staff members of this committee, varying somewhat according to type and amount of material found and the needs of the persons seeking the information.

"Due to the confusion that has arisen as to the nature [fol. 309] of the committee's files, it should be stated that the material from which reports are prepared for Members of Congress and other authorized committees and agencies is compiled from public sources such as newspapers, magazines, authenticated letterheads, and other documents available from public sources, and could be compiled by personal research on the part of any individual. These files

are distinguished from the investigative files, which material is not available to anyone except the committee investigators themselves. It should be noted that no information which is voluntarily given by individuals or groups is incorporated into these files unless the source and nature of the material has been adequately checked to insure its accuracy and validity.

"Each report that is furnished from the committee's files contains the following disclaimer:

"'The public records, files and publications of this committee contain the following information concerning (organization/individual). This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individuals and/or organization referred to above are not necessarily Communist, Communist sympathizers or fellow travelers unless otherwise indicated.'

[fol. 310] "The Members of Congress make constant use of this service with queries ranging all the way from a request for the prompt verification of a single point or a brief summary of available material, to the submission of a list of both individual and organization names, for a complete check or full report on each item. In every case a complete check of the pertinent indexes and source material must be made before an answer is supplied. But the answer may be given in either verbal or written form, verbal answers being employed only when so requested and the material may be summarized briefly and easily, or when a check has shown that we have no information to report on this subject. The more usual type of request, however, is for a complete written report setting forth not only what has been found but also where each reference appears.

"Much the same conditions prevail in regard to supplying information to the committee's staff members, who, although they often wish to examine or borrow the source material itself, also need that information assembled for them into readily accessible written form to use in connection with the extensive investigations being conducted under the direction of the committee.

[fol. 311] "On the other hand, the executive departments and agencies which are required by executive order to make a check of the committee's files send their own representa-

tives to make a check of the indexes to the material contained in the files and publications. The staff of this section is required to furnish these agents only such reference service as is involved in pointing out the reference sources, explanation of how the material indexed is recorded on the index cards, and the withdrawal of exhibit material from files for their examination when specifically authorized to do so.

"Neither the extent of the subject matter contained in the reference questions nor the time and work involved in furnishing the answers can be reduced to figures. The following statistics, however, do indicate something of the steady over-all growth and demand for the service. A count has shown that a total of about 3,800 requests for information on 10,695 individuals in 2,459 organizations was received and answered by this section during the past year. This resulted in the furnishing of written reports covering 7,687 individuals and 382 organizations and, as compared to the 1952 count, represents an increase of 200 in the total number of requests received, with 1,195 more individual and [fol. 312] 459 more organization names included in the requests. A further comparison of figures for the two years has shown 2,338 requests received from and 1,285 written reports supplied to the Members of Congress as against 2,400 requests received and 1,440 written replies to them in 1952, a small decrease which may have been caused by a change in the office procedure of handling requests.

"The total number of visits made to the files by the designated representatives of the executive departments and agencies has shown a decline from 6,260 in 1952 to 4,380 in 1953. This does not indicate any lessening of interest in or use of the committee's reference material as it may seem to appear on the surface, for the average length of each visit has increased appreciably with more persons than ever before assigned full time to the checking of our records.

"Equally important, though not always remembered, is the fact that such reference service, to be reliable, requires the proper care and handling of old material as well as the constant acquisition and proper classification, cross referencing and indexing of new material. The age and volume of the committee's valuable collection of pamphlets, periodicals, books, newspapers, leaflets, letterheads, and other source material both primary and secondary has

presented problems of housing, handling, and processing [fol. 313] which continue to increase in difficulty in direct proportion to those factors. Pressure of work has not afforded time for keeping an accurate running count of the amount of file material acquired, the number of index cards added, or the number of pieces classified and processed for files. However, it seems fair to estimate that the acquisition, classification, and indexing of the Communist press source material has kept apace of other years and that approximately 4,000 pages of the printed hearings and reports of this committee, already indexed, have been added as compared to the 2,827 pages of publications received and indexed by this section in 1952."

(Conferring with Mr. Donner)

Mr. Donner raises the excellent point that in view of the fact that these things are being physically read into the record, there may be no necessity for offering the documents as such, since there is no question as to their accuracy or authenticity.

Mr. Hitz: That is right.

The Court: Now, what is your next?

Mr. Pollitt: Next is the 1952 annual report of the committee.

Mr. Hitz: We object to that, too.

The Court: How far back are you going?

[fol. 314] Mr. Pollitt: 1949, Your Honor.

The Court: Is that necessary to make your point? Isn't it repetitious of what we have had already?

Mr. Pollitt: Well,——

The Court: The whole point is whether or not the committee was engaged in a legislative purpose when it propounded these questions; isn't it?

Mr. Pollitt: I think—Yes, Your Honor.

The Court: That is the whole point that you are making.

Mr. Pollitt: A legislative purpose. But part of that, it seems to me, is the background and approach of the committee which it brought to this specific situation. I concede that this is a tedious task.

The Court: How much of it is there?

Mr. Pollitt: We go back to 1949 on the annual reports. We have three or four, or more than three or four; shorter

excerpts from some six or seven other reports of the committee. Then we propose to offer certain extracts from the Congressional Record and various statements in the press attributed to members of the committee. That material, however, is in typewritten form and perhaps need not be affirmatively read.

Mr. Hitz: Your Honor, we object to it, because it goes to the point of lack of legislative purpose, which it has been held in the Morford case is to be presumed, once the [fols. 315-319] committee has entered a field that is open to it within the resolution.

I wonder if I could cite that to the Court and read a passage from the Morford case.

* * * * * * * *

[fol. 320] The Court: I will let you submit the evidence and overrule the objection.

What did you have to say?

* * * * * * *

READING OF EXCERPTS FROM VARIOUS SOURCES INTO RECORD.

MR. POLLITT: From the annual report of the Committee on Un-American Activities for the year 1952, the first extract is from page 6, the second full paragraph:

[fol. 321] "The committee also heard during the year testimony of Dr. Edward U. Condon, former director of the National Bureau of Standards. As a result of this hearing the committee is of the opinion that while it has no proof that Dr. Condon was ever a member of the Communist Party, his persistent association with people who were either disloyal or of suspected loyalty, coupled with his public endorsement of some of these associates, in the face of unshaken testimony to the contrary, and his failure to make any inquiry to ascertain the true facts, as well as his obvious contempt for any form of security regulations, disqualify him from holding any position in which he would have access to information of a confidential and secret nature."

On the same page and two paragraphs down:

"In order that the American public might fully realize that the Methodist Federation for Social Action is using the name of one of our largest and certainly most loyal religious bodies without authorization, the committee prepared and released a report which was a review of the Methodist Federation for Social Action.

"The committee would like to state that during this year there has been an unprecedented demand upon its file and records service, and more than ever before by the executive [fol. 322] branch of the Government. There has been a widespread demand upon the committee for its publications. We regret that in many instances publications are exhausted before they are secured by all those desiring them. Wherever possible, this committee has had additional prints made.

"In this annual report the committee feels that the Congress and American people will have a much clearer and fuller picture of the success and scope of Communism in the United States by having set forth the names and where possible the positions occupied by individuals who have been identified as Communists or former Communists during the past year. In the matter of hearings relating to the motion picture industry and professional groups, the committee is including those individuals who were named during 1951, inasmuch as these hearings have been of a continuing nature."

Turning next to page 12, the first full paragraph:

"The hearings show the great strides that have been made in removing them from the other auto locals. In congratulating the workers in these locals for ridding themselves of Communist leadership, your committee wishes to point out that evidence uncovered during the investigation discloses the Communists formerly employed in white collar positions are taking up trade work, and [fol. 323] as unknowns in the communities are obtaining employment in the auto industry. Some of these are already working within various locals."

Turning next to page 40, the first full paragraph:

"The committee originally instituted an investigation to ascertain the scope and success of Communist efforts to

infiltrate the motion picture industry in 1945. As a result of this early investigation, hearings were held in 1947, at which time the committee subpoenaed ten persons associated with the industry who had been identified as members of the Communist Party."

I beg your pardon; I will withdraw that excerpt if I may. There seems to be no point.

On page 40, the sentence reading:

"The committee wishes to urge that all fields of entertainment and culture maintain a steadfast vigilance in order to avoid the possibility of further Communist infiltration into them."

Page 57:

"The following individuals who have been identified as members of the Communist Party are being listed as having associated with the various professional groups in the Los Angeles area. It is recognized that in many instances the identifying information does not classify the individual [fol. 324] as being engaged in a profession, but since the testimony was received from individuals whose principal information deals with professional groups, they are being included herein. It should also be noted that with these identifications it does not necessarily indicate the present position or occupation of the individuals, but indicates the identification furnished by the witness."

On pages 73 and 74, material headed, "Dr. Edward U. Condon.

"Dr. Edward U. Condon was appointed director of the National Bureau of Standards in November 1945. His appointment was made even though it was known at that time by the executive branch of Government that Dr. Condon had not been permitted to visit Soviet Russia and that a passport issued by the State Department had been revoked on the request of intelligence authorities.

"Dr. Condon had, early in the development of nuclear fission, been offered a position on the atomic bomb project at Los Alamos, New Mexico. After a short while Dr. Condon rejected that appointment, voicing his disdain for the security regulations which were necessary at Los Alamos.

"During the course of its investigations to ascertain the extent and success of Soviet espionage activities relating [fol. 325] to the atom bomb, the committee was amazed at the numerous instances in which it was disclosed that Dr. Condon was acquainted with known and suspected espionage agents. The committee did not nor does it now possess information that Dr. Condon was a Communist or committed any act of espionage. However, because of his associates and his disdain for security regulations, the committee recognized his vulnerability in any post of security. For this reason, the committee issued a report in 1948 setting forth the information it possessed concerning Dr. Condon's associations. It was hoped that Dr. Condon would voluntarily resign, but if he did not, it should serve as a warning to Dr. Condon, as well as security officers, that his associations disqualified him from access to qualified material. Dr. Condon did not resign, but rather attempted to justify his associations, and not only claimed his lack of knowledge of any espionage activities on the part of these people, but in some instances went so far as to voice confidence in their complete honesty, notwithstanding unshaken testimony of others, even though he made no inquiry as to the veracity of these charges. Dr. Condon adopted the attitude that because he had not appeared before the committee, he had been maligned when the report was issued, [fol. 326] although he did not deny his association with these known and suspected Soviet espionage agents, but claimed that his associations with them were perfectly normal, and that he had not engaged in espionage with them.

"In 1952, a Member of Congress, in prefacing a statement on the floor of Congress, charged the committee with failure to hear Dr. Condon. As a result, the committee voted to invite Dr. Condon to appear before it. Dr. Condon declined the invitation, and the committee voted to subpoena him. Dr. Condon was heard on September 5, 1952, at which time he reiterated his lack of knowledge of the espionage activities of the persons the committee had named as having associated with him, and denied having ever been a Communist. Dr. Condon's appearance, however, served to confirm the committee's belief that because of his propensity for associating with persons disloyal or of questionable loyalty, and his contempt for necessary

security regulations, that he is not qualified for acceptability to any security position."

Turning to page 77,——

Mr. Hitz: Might I interrupt just a moment, please?

Your Honor, I would like to move to strike that excerpt, for the reason that it is so remote, not only in time, but [fol. 327] as to the individual concerned, that although a report, according to Your Honor's ruling, of the committee, sometime within the general area of the testimony of Mr. Gojack, may be relevant to the question of legislative purpose, it can now be so remote it lacks materiality within that field. We think this is far too remote.

The Court: It is very remote, but I overrule your objection and will leave it in for whatever it is worth.

Mr. Pollitt: On pages 77 and 78:

"The reference service furnished during the year has shown a steady increase, reflecting a greater growth in the amount of information requested."

(After consulting with Mr. Donner:) I will withdraw that.

Mr. Donner: Your Honor, we have had so much material on the reference service that we will simply pass that over. That would be cumulative.

The Court: I didn't think it was favorable to your contention, either, as he started to read it.

Mr. Donner: Oh, I didn't know that.

Mr. Pollitt: On the other hand, this material does seem to be relevant, on page 78:

"A certain amount of reference service has also been furnished this year in answering some requests made by private individuals who showed a sincere and genuine need [fol. 328] for information of the type which is available here. Answers to such inquiries were necessarily greatly restricted both as to number and to length of answer, because our staff is not large enough to supply any considerable service of this kind."

And the 1951 report, the annual report of the Committee on Un-American Activities for the year 1951, page 1. On page 1:

"The committee has also frequently invited any person named in testimony before the committee as being a mem-

ber of the Communist Party or Communist front organization to come before the committee to either affirm or deny the statements made concerning him."

On page 2:

"Hearings conducted in 1947 resulted in the identification of ten persons associated with the motion picture industry as members of the Communist Party." Then, going further down the page:

"It is the hope of the committee, after having conducted the 1947 hearings, that the motion picture industry would accept the initiative and take positive and determined steps to check Communism within the industry. Unfortunately, however, the spokesmen for the industry persisted in that time in painting an unrealistic picture of Communism in [fol. 329] Hollywood, and some, at least, would have had the American public believe that there was no such thing as organized Communism in the motion picture industry.

"The committee pursued its established policy that whenever it is obvious that a responsible group, whether in industry, labor or an independent organization, does not perform its duty in guarding itself against Communist influence, then the committee must expose this defect. So it was in the motion picture industry. The committee's hearings in 1951 resulted in the identification of more than 300 persons associated with the industry as members of the Communist Party. There were varied opinions given by the witnesses as to the success of the Communists in influencing the contents of motion pictures. The fact was evident that such efforts were made."

On page 5:

"During the past year, this committee has been subject, as have many congressional committees in the past, to the efforts of various pressure groups. The committee recognizes that for the most part, all of the American public is interested in the proper identification of Communists and Communist endeavors. The committee, however, cannot lend itself to any selfish aims to discredit or defame any [fol. 330] persons or groups. To this end, the committee must affirm its directed aims to investigate subversive and un-American activities, and takes this opportunity to invite

any person having definite information concerning the identities of any Communists or knowledge of subversive endeavors, to furnish such information to the committee."

Page 6:

"During 1951, the committee's hearings disclosed the positive identification of more individuals as members of the Communist Party than during any preceding year in the history of the committee."

On page 8:

"The committee was astounded when the true extent of Communist infiltration and manipulation in the Hollywood motion picture industry was disclosed. The committee had assumed that its 1947 hearings had served to minimize the power of the Communist Party among the devotees of the silver screen. However, it was found during the course of the 1951 hearings that actually the 1947 hearings had not lessened the extent of Communist infiltration in Hollywood, and had not prevented the flow of money from Communists and fellow travelers employed in the industry to the Communist Party." Then, further down the page:

[fol. 331] "The committee's investigation of the motion picture industry was concerned almost entirely with the problem of exposure of the actual members of the Communist Party, and did not deal, except in a few instances, with the problem of those who held or had held the status of fellow travelers."

On page 9:

"During the 1951 hearings of the committee, dealing with the Hollywood motion picture industry, there were more than 300 persons connected with the industry who were definitely identified as members of the Communist Party, either past or present."

On page 16:

"History alone will show how many of Professor Struik's students were led by him down the road to Communism from which they were unable to return until they had performed acts against their country and fellow citizens. The administrators of the Massachusetts Institute of Tech-

nology share equally if not more so the responsibility for leading these young people away from American ideals and democratic principles."

And on page 17:

"With individuals like Professors Struik and Mather teaching in our leading universities, your committee wonders who the Professor Struiks were at Harvard who led [fol. 332] Alger Hiss along the road of Communism until he committed espionage against his country."

This is, I don't believe, in the Watkins record.

The Court: What did you say?

Mr. Pollitt: I informed Mr. Hitz that I didn't believe—I thought this was new material: that is, not offered in the Watkins case.

The Court: Oh, I see.

Mr. Pollitt: "Who were the Professor Struiks at Columbia who led Elizabeth Bentley into her eventual role as courier in the Soviet espionage apparatus? Who were the Professor Struiks responsible for leading the Rosenbergs, Hiskey, Gold and others into their espionage roles?

"The committee has read newspaper accounts of the concern voiced by leading universities over football and their plans to de-emphasize the sport. When will our colleges display the same concern over the activities of Professor Struik and his kind and de-emphasize Marxism?"

Mr. Hitz: May I interrupt a minute?

I would like to again interpose my objection to lack of materiality, and again, lack of relevancy. This is certainly remote, Your Honor, and has no bearing upon this case. The law has been established here that unionism is a field [fol. 333] in which the committee may investigate and legislate: that the numbers of persons, the extent of their operations, even back in 1942, Judge Bastian said, would be perfectly proper. I think this record is being unnecessarily cluttered by material that is far too remote.

The Court: It is overruled. I will leave it in.

You are still reading from the report?

Mr. Pollitt: Yes, Your Honor. That concludes that portion.

Reading now from the annual report of the Committee on Un-American Activities for the year 1950, House Report No. 3249, on page 4:

"While this legislation cannot be retroactive"——

Mr. Hitz: Could I interrupt just a moment? You are not giving these defendant's numbers any more, these reports?

Mr. Pollitt: No, we are not introducing them.

"While this legislation cannot be retroactive, the committee intends to devote a major share of its efforts to a continued investigation of the persons who have engaged in espionage and the proof of their activities. As illustrated by the Scientist "X" case, this is a long, tedious process. A score of witnesses in the Scientist "X" case have been located and subpoenaed by the committee. Prosecution is not yet possible because a majority of these witnesses refuse to cooperate with their Government, even though they [fol. 334] themselves are not involved in any espionage activity, by refusing to answer questions relating to their Communist Party activities, on the ground of self-incrimination."

Continuing on page 4, further down the page:

"An extensive investigation was conducted into the activities of Agnes Smedley. This committee planned to subpoena and expose the activities of Agnes Smedley upon her return from England, but because of her death, the results of this investigation have not been made public."

On page 25:

"The Committee on Un-American Activities, on September 17, 1950, issued a report on the National Lawyers Guild, exposing that organization as a Communist front and recommending that the Attorney General of the United States place this organization on its list of Communist fronts."

On page 27:

"The petition being generally circulated in the United States is under the sponsorship of the Peace Information Center, headed by Elizabeth Moos, the mother-in-law of William Walter Remington, now on trial for perjury re-

lating to his Communist Party membership. In addition to these petitions, other petitions identical to the Stockholm [fol. 335] 'Peace Pledge' are being circulated by the Labor League for Peace, the Maryland Committee for Peace, and other State bodies. The committee has advised the American people not to affix their signatures thoughtlessly to this appeal, being aware of the implications and seriousness of such acts."

On page 41:

"The committee has made readily available as a reference facility a collection of lists of signers of Communist Party election petitions obtained from original petitions or photostatic copies of original petitions which contained 363,119 signatures for various years in 20 states. Its reference collection includes information and documentary evidence collected by staff investigators, official records obtained from other agencies, and data supplied by law enforcement agencies."

And on page 42:

"The consolidated card files of the committee now contain more than half a million card references which serve as index to source material on file."

Turning now to the annual report of the Committee on Un-American Activities for the year 1949, page 7:

"On May 24, 1949, Hiskey was given an opportunity to defend himself with the assistance of counsel against accu- [fol. 336] sations made before the committee. He refused to affirm or deny the charges on the ground or self-incrimination."

Page 15:

"The committee would like to remind the Congress that its work is part of an 11-year continuity of effort that began with the establishment of a Special Committee on Un-American Activities in August 1938. The committee would also like to recall that at no time in those 11 years has it ever wavered from a relentless pursuit and exposure of the Communist fifth-column."

If Your Honor will excuse me a minute. (Conferring with Mr. Donner)

The Court: Have you finished with 1949 now?

Mr. Pollitt: I will be in one second now.

On page 9 of the 1949 report:

"On August 10, 1949, Thomas J. Fitzpatrick, Frank Panzino, and Robert C. Whisner were given a full opportunity by the committee to answer the charges which had been made against them."

That ends the 1949 report.

The Court: Now, I have another criminal matter to take up just before recess, so I will adjourn this case until 1:45.

[fol. 337] (Whereupon, at 12:25 p.m., the Gojack case was adjourned for lunch.)

AFTERNOON SESSION

(The Court reconvened at 1:45 p.m.)

Mr. Pollitt: The next document, Your Honor, from which I propose to offer excerpts, is the document entitled, "This Is Your House Committee on Un-American Activities," a publication prepared and released by the committee in 1954.

The Court: May I see it? (Document handed up to Court) Have you seen it, Mr. Hitz?

Mr. Hitz: Yes, Your Honor, I have.

The Court: You object?

Mr. Hitz: We do object to it, Your Honor, on the same grounds.

Have you given that a number, Mr. Pollitt?

Mr. Pollitt: Well, I have abandoned the practice of giving these documents numbers. I am just reading the excerpts into the record.

The Court: (After inspecting document) Overruled. You may read it into the record.

Mr. Pollitt: The first excerpt is on page 17:

"Question 71: Of what value has the House Un-American Activities Committee been in exposing subversive activities?

[fol. 338] "For a period of many years the House Com-

mittee on Un-American Activities was the only Federal body that was furnishing the Congress and the American people with information relating to subversive activities. The true facts of Soviet espionage operations were known to the FBI but it was powerless to act because of administration restrictions. The committee, through its investigations, hearings, and reports, has over the past years exposed many of these espionage operations. The committee has distributed hundreds of thousands of printed hearings and reports and held hearings throughout the United States, exposing subversive activities and gathering information upon which Congress has based legislation."

On page 18, Question 76:

"Has the committee actually had the names of more than a handful of persons who were members of subversive groups?

"Since 1948, the committee has had positive identifications of 4,151 persons who were members of the Communist Party in the United States. Of this total number, 2,381 have been named during this 83rd Congress by witnesses under oath before the committee."

On page 25, Question 105:

"How has the committee assisted in disclosing the opera-
[fol. 339] tions of the Communist Party and its fronts?

"This committee and the special committee have, over the past 16 years, held hundreds of hearings and issued and distributed throughout the United States hundreds of thousands of reports exposing the operations of the Communist Party and its fronts."

The next document, Your Honor, is another committee document, entitled, "100 Things You Should Know about Communism," dated May 14, 1951. (Handing up to Court)

The Court: Have you marked what you intend to offer?

Mr. Pollitt: I believe so, Your Honor.

The Court: Where the clips—oh, I see, where there is a pencil mark.

Mr. Hitz: We object for the same reasons, Your Honor.

Mr. Pollitt: I intend to offer approximately seven questions in the document and the release on page 125-126.

The Court: Overruled.

Mr. Pollitt: On page 16, Question 64:

"How can a Communist front be identified?

"If you are ever in doubt, write the House Committee on Un-American Activities, Room 226, House Office Building, Washington 25, D. C."

Page 19, Question 89:

"What is the best way to combat Communism?

"Detection, exposure, and prosecution."

[fol. 340] Question 90:

"Are these being done?

"Millions of dollars have been spent by the Federal Bureau of Investigation, Army and Navy Intelligence, and other executive agencies, to detect and keep track of Communists since the party's organization in this country a generation ago. Exposure in a systematic way began with the formation of the House Committee on Un-American Activities in May 26, 1938."

On page 67, Question 2:—

I might explain the "100 Things" is actually a number of documents, each of which run to a hundred questions and answers, so that the numbers are actually in order as given.

"Question 2: Well, aren't the unions being investigated by your committee?

"No. Investigating unions as such is not the committee's job, and so the committee does not do it. The House Committee on Un-American Activities was started on its way May 20, 1938, with instructions from the United States House of Representatives to expose people and organizations attempting to destroy this country. That is still its job, and to that job it sticks."

[fol. 341] Page 71, the following statement from the answer to Question 27:

"However, this committee, the Department of Justice and other official agencies issue from time to time lists of Communist front organizations and outright party groups."

And page 76, Question 48:

"How can Communism be stopped here?

"First, detect the Communists at work around you. Second, expose them in all their connections. Third, wherever possible, force their prosecution under the laws of our country."

On page 125-126, headed—Well, I will read it in full.

"Congress of the United States, House of Representatives, Committee on Un-American Activities, Washington, September 21, 1950."

Then the heading, "Release." The text is as follows:

"In a report dated March 29, 1944, the Special Committee on Un-American Activities listed the United Gas, Coke, and Chemical Workers of America as an organization in which 'Communist leadership is strongly entrenched.' In a publication issued in December of 1948, entitled, '100 Things You Should Know About Communism and Labor,' the Committee on Un-American Activities repeated the [fol. 342] foregoing statement in answer to the question, 'What unions have the Communists controlled?'

"Upon request of the officers of this union, a subcommittee of this committee on August 17, 1950, heard the testimony of Mr. Martin Wagner, president of the organization. From this evidence the committee finds:

"1. The United Gas, Coke and Chemical Workers of America has taken energetic and effective measures to eliminate such influence.

"2. All persons against whom substantial evidence of Communist activities or views exists in the records of the Committee on Un-American Activities have been removed as officers.

"3. The charters of local unions found by the parent organization to be following the Communist Party line have been revoked.

"4. According to a constitutional amendment adopted by the union, no person who is a member of a Communist, Nazi or Fascist organization may be a member of the executive board or an employee of this union.

"Upon this testimony, the Committee on Un-American Activities had adopted a resolution providing:

"1. The name of the United Gas, Coke, and Chemical [fol. 343] Workers of America shall be dropped from future editions of the committee pamphlet, '100 Things You Should Know about Communism.'

"2. No additional copies of the present issue of any committee publication containing reference to this union shall be issued without notation that the statement about the union is no longer true.

"3. Any statement by any person to the effect that this committee now finds that the United Gas, Coke and Chemical Workers of America under its present officers and by-laws to be under Communist influence or leadership is unauthorized and untrue.

"4. That a copy hereof over the signature of the committee chairman shall be furnished the union.

"The foregoing is a copy of the action taken by the Committee on Un-American Activities on the report of the subcommittee appointed to hear the testimony of Mr. Martin Wagner, president of the United Gas, Coke and Chemical Workers (CIO). John S. Wood, Chairman, Committee on Un-American Activities."

The next document is a committee publication entitled, "Organized Communism in the United States." From this I will just read the last two paragraphs on page 2.

The Court: Let me see it. (Document handed up to the Court)

[fol. 344] Mr. Hitz: I object to it, Your Honor.

The Court: This was prepared and released by the Committee on Un-American Activities.

Mr. Hitz: Yes, Your Honor.

The Court: Overruled.

What is the date?

Mr. Pollitt: 1953.

"A careful study of the calls"—

This is on page 2 of the report.

"A careful study of the calls, conventions, constitutions, manifestos and directives adopted or issued throughout

these past 34 years will give the American people a better understanding of the true meaning of Communism and will effectively demonstrate that it is not only the threat of Soviet-inspired subversion, spying and sabotage that constitutes a danger to our free institutions, but that the philosophy of Communism, in whatever form or whatever name it may appear, regardless of how cleverly it may be camouflaged or how attractively it may be packaged, is an even more dangerous threat to the American system of society and government.

"The following resume of the background of organized Communism in the United States is intended to serve this purpose."

[fol. 345] The next material I would like to offer the Court is contained in the hearings of the committee on "Communist Methods of Infiltration—Education," Part 3, on page 998, the colloquy between a witness and Mr. Clardy, a member of the committee. (Handing up to Court)

Mr. Hitz: We object.

The Court: Sustained.

Mr. Pollitt: Your Honor, in this, by way of an offer of proof, may I, instead of reading it into the record, just hand it to the reporter to be copied?

The Court: Certainly.

(Thereupon, Mr. Pollitt tendered the following proof, which was then copied by the reporter and is reproduced below:)

"Mr. Polumbaum. I believe that this committee—if this committee has any evidence of illegal activities or illegal conspiracy, it is certainly within its right to bring this evidence before the proper authorities and have any persons so charged brought into court.

"Mr. Clardy. That is what we are doing. We are bringing it to the attention of the American people—the real jury that will convict those of you that may be engaged in that conspiracy."

[fol. 346] Mr. Pollitt: The next matter is an excerpt from page 1106 of the hearings before the Committee on Un-American Activities, 83rd Congress, a document entitled, "Communist Methods of Infiltration (Education), Part 4."

(Handing up to Court)

The colloquy there is between—or it actually consists of a statement by Mr. Velde, the chairman of the committee, as to the purposes of the committee.

Mr. Hitz: We object.

The Court: You object?

Mr. Hitz: I do object, Your Honor.

The Court: Sustained.

Mr. Pollitt: I don't want to press Your Honor's ruling, but I do submit that the statement of the chairman has more authority than the statement of a member.

The Court: Well, my ruling is the same.

Mr. Pollitt: Yes, Your Honor. Then I will make this by way of offer of proof.

(Thereupon, Mr. Pollitt tendered the following proof, which was copied by the reporter and is reproduced below:)

Mr. Velde. I was in the Federal Bureau of Investigation for some time, and I am aware of the fact that while every attempt is made to discover subversive activities by the Federal Bureau of Investigation, like all other intelligence agencies they are not infallible, and I can assure you very [fol. 347] definitely that the Federal Bureau of Investigation does not have the complete roster of members of the Communist Party and does not have a complete list of all of the persons in this country who are engaged in subversive activities. That fact has been brought out. I think Mr. J. Edgar Hoover and the Federal Bureau of Investigation are fine people and it is a great organization, but they are not infallible.

So as a committee of Congress elected by the people, we feel that we have a duty and that duty has been imposed upon us by Congress not only to report to Congress for the purpose of remedial legislation but to inform the people who elected us about subversive activities. Frankly, I think that at the time you became dissatisfied and withdrew from the Communist Party, as an American citizen it imposed a duty upon you to apply to some agency of Government which was interested in subversive activities. You say you knew they were investigating you. I mean that in all respect, but I just want to put that in the record.

Mr. Pollitt: The next material, Your Honor, we do not have in its official form, but Mr. Hitz has agreed that it is an accurate representation. It consists of two portions of [fol. 348] committee reports, at the bottom of page 151 and running over to 152 in the record of the Watkins case.

(Handing up to Court)

The Court: This is 1952?

Mr. Pollitt: Yes, Your Honor.

The Court: I sustain the objection.

Mr. Hitz: I make the objection.

Mr. Pollitt: I make this also by way of an offer of proof.

Mr. Hitz: What was your page number in the Watkins case?

Mr. Pollitt: 151, bottom of 151 all the way through 1952.

Mr. Hitz: Your Honor, with respect to that, I wonder if Mr. Pollitt would note whether or not in the Watkins trial that was received or rejected in evidence.

Mr. Pollitt: I assume it was rejected.

Mr. Hitz: I will agree to that, if that is so.

The Court: Would that be important?

Mr. Hitz: I think so. I think it was rejected in the other trial, and the conviction was affirmed. We have an absolute precedent for that particular item in this case.

(Thereupon, the above offer of proof, from Joint Appendix in the United States Court of Appeals, No. 12,797, John T. Watkins, Appellant, v. United States of America, [fol. 349] Appellee, was copied by the reporter:)

Special Report on Subversive Activities Aimed at Destroying Our Representative Form of Government—77th Congress—2nd Session, 1942.

This committee has defined its special function, in accordance with the terms of the mandate given by the House, as the discovery and exposures of those enemy groups which fight with non-physical weapons as a fifth column on our home front. (Page 2)

On October 25, 1939, the committee made public the names, positions, and salaries of some 563 Government employees located in Washington, D. C., who were members of the American League for Peace and Democracy. In three reports which this committee has made to the House,

it has found the American League for Peace and Democracy to be a Communist front organization. It will be recalled that Earl Browder was vice president of that organization. Furthermore, the Attorney General, Mr. Francis Biddle, has branded the American League a subversive organization, in language as strong as any used by this committee in its character. In making public this list, the committee issued an accompanying statement which made clear that it did not consider all of the people on that list or any one of them in particular to be Communists, but in [fol. 350] view of the fact that these Government employees were members of a Communist front organization and continued their membership long after the organization was exposed as being Communistic, the committee felt that the Congress and the people were entitled to know who they were. This was an authentic membership list obtained from the headquarters of the American League for Peace and Democracy by due process of subpoena which was served upon the secretary of the organization. (Pages 4 and 5)

Report of the Committee on Un-American Activities, 79th Congress, 2nd Session, 1946. H. Rept. 2742.

The committee, during the past two years, has assembled an exhaustive file on every known subversive individual and organization at work in the United States today. The committee's system of cross indexing, filing, and master filing is considered one of the outstanding systems of this type in the United States. The files of the committee are used daily as sources of information by practically every investigative division of the Federal Government. (Page 16)

Mr. Pollitt: The next material I wish to offer is material [fol. 351] from a hearing before the Committee on Un-American Activities in 1953, entitled, "Communist Methods of Infiltration (Education—Part 2)," on page 221, a statement by Mr. Velde, made in the opening committee hearing.

(Handing up to Court)

Mr. Hitz: We object.

The Court: Sustained.

Mr. Pollitt: I will make this, may I, by way of an offer of proof.

(Whereupon, the reporter copied the following matter as the offer of proof referred to:)

Communist Methods of Infiltration (Education—Part 2) —Hearing before the Committee on Un-American Activities—House of Representatives, 83rd Congress, 1st Session, March 12, 13, 17, 18, April 14, 16, 1953.

Mr. Velde. * * * in relation to the appearance of Abraham Glasser, professor in the Rutgers University School of Law, the committee wishes to acknowledge and express its appreciation to Rutgers University and its officials for the excellent cooperation it has extended the committee. The committee wishes to state that it hopes that the excellent spirit of cooperation exhibited by this outstanding university might serve as a model to other colleges and other [fol. 352] universities in the United States. There has been no implication nor misunderstanding that the committee, in hearing Mr. Glasser, has in any manner instituted or conducted any investigation of Rutgers University."

Mr. Pollitt: The next material is in the report of the Special Committee on Un-American Activities, House Report No. 2, 1939, on page 13, the first sentence of the second full paragraph. In support of this material I wish to point out that the earlier portions of the committee reports which I read had adopted as their own the full history and procedure of the committees since the foundation of the committee in 1938. (Handing up to Court)

Mr. Hitz: We object to it.

The Court: Have you read this?

Mr. Hitz: I object to it, anyway.

The Court: Well, if you proceed after his bracket, it relates to a definite legislative purpose. Let me read it:

"While Congress does not have the power to deny to citizens the right to believe in, teach or advocate Communism, Fascism and Naziism, it does have the right to focus the spotlight of publicity upon their activities"—

[fol. 353] that is the end of his tender, but the sentence continues—

"and to outlaw any organization which is found to be under the control of or subject to the dictation of a foreign government"

Then it goes on to say that Congress has the right to require such organizations to make periodic reports, and so on.

That is definitely a legislative purpose.

Mr. Hitz: Well, we think we have sufficiently proved that the particular inquiry was one within the resolution. We don't feel that we need any further assistance on that.

The Court: Well, it is 1939. I will sustain the objection, but I should think there would be none made.

Mr. Pollitt: My offer is the bracketed material.

The Court: You don't offer what I read in addition to the bracketed material?

Mr. Pollitt: No, Your Honor.

(The material offered as tender of proof, discussed above, was copied by the reporter and appears below:)

While Congress does not have the power to deny to citizens the right to believe in, teach, or advocate Communism, Fascism, and Naziism, it does have the right to focus the spotlight of publicity upon their activities . . .

[fol. 354] Mr. Pollitt: The next matter I wish to offer is from a report of the committee, of the Special Committee on Un-American Activities in 1940, the matter beginning on the last—matter in the last paragraph beginning on page 1 and ending with the first period on page 2. The bracket in this one, Your Honor, is misplaced. It starts in the middle of a sentence. I did not intend it to. (Handing up)

Mr. Hitz: Have you identified the report by number or such?

The Court: No. 1476.

Mr. Pollitt: Oh, and pages 3 and 4 of that report as marked.

Mr. Hitz: We object to it, Your Honor.

The Court: It is dated January 3, 1940.

Mr. Pollitt: Yes, Your Honor.

The Court: I sustain the objection.

Mr. Pollitt: I will tender it to the stenographer by way of an offer of proof.

The Court: You tender what is in the brackets?

Mr. Pollitt: Yes, Your Honor.

(The offer of proof, copied by the reporter, was as follows:)

Investigation of Un-American Propaganda Activities in the United States—January 3, 1940.

[fol. 355] One method which can and should from time to time be used is the method of investigation to inform the American people of the activities of any such organizations in their nation. This is the real purpose of the House Committee to investigate un-American activities.

* * * * * * *

The committee conceives its principal task to have been the revelation of the attempts now being made by extreme groups in this country to deceive the great mass of earnest and devoted American citizens.

Mr. Pollitt: My next offer—I think I will number this one.

(Paper was marked as Defendant's Exhibit No. 8 for identification.)

The Court: Have you seen this, Mr. Hitz, before?

Mr. Hitz: I don't think I have, Your Honor. Might I glance at it?

The Court: Yes.

Mr. Hitz: Was all of this material offered in the Watkins case?

Mr. Pollitt: There may be one or two additions, I might have added a sentence to the same context or cut it short, but——

The Court: Doesn't this come within the interdiction [fol. 356] of the Watkins decision, where the Court of Appeals stated that:

"Appellant would have us judge the present controversy upon the basis of speeches made by Members of the Congress and others, and upon newspaper articles, etc. We cannot do so. Such material is not evidence"?

Isn't all of this from speeches of Members of Congress?

Mr. Pollitt: Well, these people are more than Members of Congress, Your Honor. They are members of the com-

mittee; in many cases, chairman of the committee, and members of the subcommittee before which Mr. Gojack appeared.

Now, I do not read the Watkins case as foreclosing the possibility of proving that there was no legislative purpose in the endeavor, in the committee proceeding. I read the Watkins case as leaving this as a matter of proof, and I therefore feel that that excerpt means that the evidence was insufficient to make the case. Here, of course, we have not only this evidence but other evidence.

Mr. Hitz: We object to it, Your Honor.

The Court: Sustained.

Mr. Pollitt: Might I offer, Your Honor, I submit this exhibit as an offer of proof.

Mr. Hitz: I wonder if Mr. Pollitt would enlighten us as to those parts of the Exhibit 8 that were in the Watkins [fol. 357] case, were objected to and sustained, or objected to and admitted in the Watkins case.

Mr. Pollitt: I have to get back the Watkins record.

The Court: Were these——?

Mr. Hitz: I am told that all of these or most of them were part of the Watkins case, and it is my understanding that they were rejected, which would be a positive precedent for this case.

Mr. Pollitt: The judge apparently didn't feel the necessity of it, but I would be glad to enlighten you.

The Court: I think the record should be clear on that point, although if it is going to take a lot of time, you can certainly get it later on.

Mr. Hitz: I think we can arrange it later on.

Mr. Pollitt: At any rate, it seems, in a cursory examination, this is in an exhibit for identification. I presume that means it wasn't received.

Would you mark this, please.

(Paper was marked as Defendant's Exhibit No. 9 for identification.)

The Deputy Clerk: Defendant's Exhibit No. 9 for identification. (Handing up to Court)

Mr. Pollitt: Defendant's Exhibit No. 9, Your Honor, consists of a series of newspaper reports, statements primarily if not entirely by chairmen of the committee.

[fol. 358] Mr. Hitz has agreed as to the accuracy of these statements.

Am I correct?

Mr. Hitz: Well, I agreed in advance not to object on the best evidence rule, or lack of authenticity, and I do not object on those grounds. I do object that these are immaterial and irrelevant under the Watkins decision.

The Court: Well, the Watkins decision also says that:

"[A valid legislative] purpose cannot be solved by generalities culled from speeches, many of them no doubt partially extemporaneous, or from partisan assailants, critics, friends or defenders of some project or cause."

This would seem to me to come within the ruling of the Watkins case.

Mr. Pollitt: Your Honor, we are making no contention that these proved that case completely.

The Court: Well, I am bound by the decisions of the appellate tribunals. The objection is sustained. The exhibit has been tendered.

Mr. Hitz: And might Mr. Pollitt indicate whether these were some of the exhibits that were rejected in the Watkins case?

Mr. Pollitt: It appears to be the case. You have the record, don't you, Mr. Hitz?

Mr. Hitz: I left mine downstairs.

[fol. 359] Mr. Pollitt. Oh.

Now, Your Honor, I would like to offer separately the last item here,—

The Court: Have you come to the bottom of the barrel? You said the last item.

Mr. Pollitt: The last item in this exhibit.

The Court: Oh. All right. I was unduly optimistic.

Mr. Pollitt: It happens to be——

Mr. Hitz: Is this part of 9?

Mr. Pollitt: Part of 9.

—the item headed, "From the Washington Daily News," dated November 19, 1954, consisting of a statement by Francis Walter, Representative Francis Walter, as to his plans. In this statement, he—

The Court: Is this part of that last exhibit?

Mr. Pollitt: Yes, Your Honor. I wish to re-offer this separately.

The Deputy Clerk: I will mark it 9-A.

The Court: Let me see it, then.

The Deputy Clerk: Oh, it is part of this?

Mr. Pollitt: It is on the last page of that exhibit.

The Court: Well, when I deny an exhibit, I deny it in its entirety.

Mr. Pollitt: This doesn't seem to be a special statement of the type characterized by the Watkins report. It seems [fol. 360] to me to be a reasonably thought-out statement of purpose and objective which was followed through, to hold hearings in a community, expose people before their neighbors and fellow workers.

"And I have every confidence that the loyal Americans who worked with them"—

now I am quoting—

"will do the rest of the job."

As a matter of fact, we have already a similar statement in the record with reference directly to Mr. Gojack.

Mr. Hitz: We renew our objection to this.

The Court: The ruling is the same.

Mr. Pollitt: Your Honor, I have reached the bottom of the barrel.

The Court: You have? All right, now,——

Mr. Hitz: I wonder if I could remind counsel that Mr. Tavenner has remained here,——

The Court: I was just about ready to do that.

Mr. Hitz: Thank you.

The Court: Mr. Tavenner, you will resume the stand now.

Thereupon, FRANK S. TAVENNER resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

[fol. 361] Recross-examination.

By Mr. Donner:

Q. Mr. Tavenner, I believe I asked you before the recess to ascertain how many requests there were in the committee files for information pertaining to Mr. Gojack. Were you able to determine that?

A. Yes, sir. I had the files examined from 1950 through the year 1954 for that information. and I am advised that the files show that reports were furnished to Members of Congress during those years as follows:

1950, one report; 1951, two reports; 1952, one report; 1953, ten reports; and 1954, two reports.

Q. Now, with respect to the other matter that I interrogated you about, the police agency which turned over to you the letter which appears at page 139 of the hearing involving Mr. Gojack, can you identify that agency?

A. I now know the agency.

Q. Will you tell me what it is, please?

The Witness: If it please the Court, I respectfully decline to answer the question on the ground that it is confidential information which I am not permitted by the rules of the committee to give out, of an investigative character.

Mr. Donner: Your Honor, I don't see how the identity of the agency would constitute confidential information [fol. 362] within the normally understood scope of privilege. We are not dealing here, I take it, with the question of the identity of an informant. I am merely asking for the name of the agency; that is, the geographic name of the agency which turned over this information; and I ask that the witness be directed to answer.

The Court: Do you wish to be heard?

Mr. Hitz: We think that the privilege that Mr. Tavenner has asserted here, that is, the confidential character of the material within the House, is a proper privilege, because we think it is immaterial to the trial of this case, and therefore there is no reason why that privilege of confidence should be invaded.

In addition to that, we think that it falls within the in-

former's privilege; that is, to remain silent upon the identity of informants who give information to agencies of the Government.

Thirdly, we say that in itself it is immaterial, independent of its existence as part of the files of the committee, and also irrelevant.

The Court: Do you have any rebuttal?

Mr. Donner: Yes. First, this question is preliminary to a definite objective which I desire to bring out on examination with respect to the manner in which these documents came into this committee's files.

[fol. 363] Second, there is no question here as to the identity of anybody. I am not asking for the identity of any man. I am asking him for the name of the agency where these files originated, Your Honor.

The Court: You understand that, do you, Mr. Tavenner?

The Witness: Yes, sir.

The Court: You still make the claim?

The Witness: Yes, sir.

The Court: Notwithstanding the fact that it is not the name of an individual, but the name of an organization?

The Witness: Yes, sir.

The Court: I sustain the claim.

That does not preclude you from asking further questions along the line you suggested, Counselor.

By Mr. Donner:

Q. Was the committee at any time in touch with any union representative prior to the holding of this hearing on February 28th?

A. I do not know.

Q. Do you know whether the committee was in touch with representatives of a union rival to the United Electrical Workers?

A. I know I would have no such contact. I do not know of contact that others may have had or may not have had.

Q. You simply don't know?

[fols. 364-451a] A. That is right.

* * * * * * *

[fol. 451b] Reporter's Certificate to foregoing transcript omitted in printing.

[fols. 452-453] Filed July 12, 1956. Harry M. Hull, Clerk

DEFENDANT'S EXHIBIT No. 1

nite side

unamerican

by robert e. thompson

washington, feb. 14—(ins)—house unamerican activities committee members said today they are out to "bust" the alleged communist-led independent united electrical workers union, and refused to postpone a hearing into the union's activities.

during a hurriedly-summoned session to hear protests from a union spokesman, chairman francis walter (d) pa., and rep. morgan moulder (d) mo., both declared the committee should try to break the hold of the union on defense plants.

the cio expelled the ue a few years ago on charges that its leaders were communists.

walter was accused in a telegram by the union's district nine representative, john t. gojack, of being a "union buster" because the committee plans to investigate the ue in fort wayne, ind., on feb. 21 just prior to a union election at the magnavox plant.

george goldstein, washington representative for the union, appeared before the committee to urge postponement of the hearing.

goldstein stalked angrily from the committee room, however, when walter demanded that he address the committee under oath. the union leader refused to have his discussion recorded.

walter declared: "you're not going to say anything unless its under oath—i want a record—because i got a telegram indicating your crowd would stop at nothing."

[fol. 454] add one unamerican

walter told goldstein: "nobody on this committee is interested in busting unions . . . we all have records . . . but all of us are interested in your union going out of business because it is not good for the united states."

moulder, who will head the fort wayne probe, also asserted the committee should use its influence to break the ue.

goldstein told walter: "we will welcome your comittee there (Fort Wayne)." he said, however, the hearing should be held off until the election, slated for feb. 24, is over.

walter termed the telegram from gojack "insulting."

the fort wayne investigation was sparked by the refusal of david mates, a ue official from detroit, to testify before the committee in december.

walter said he has learned that mates now is working on behalf of the union in fort wayne, he also charged that the doctor who signed mates' certificate in december examined troops for the alleged red-led abraham lincoln brigade which served in the spanish civil war in the 1930's.

walter said: "if these people are well enough to be in fort wayne, indiana, they are well enough to testify."

-ret-

[fol. 455] Filed July 12, 1956. Harry M. Hull, Clerk

DEFENDANT'S EXHIBIT No. 2

Journal-Gazette

Fort Wayne, Indiana, Tuesday Morning, February 15, 1955

House Un-America Committee Wants UE 'Out of Business'

Gojack Telegram Accuses Walter of Union Busting

By Robert E. Thompson

Washington, Feb. 14 (INS)—House Un-American Activities Committee members frankly declared today they are out to break the alleged Communist-led Independent United Electrical Workers Union, and refused to postpone a hearing into the union's activities.

During a hastily-summoned session to hear protests from a union spokesman, Chairman Francis Walter (D-Pa) and Rep. Morgan Moulder (D-Mo), both declared the committee should try to break the hold of the union on defense plants.

The CIO expelled the UE a few years ago on charges that it was Communist dominated.

Accused by Gojack

Walter was accused in a telegram by the union's District Nine representative, John T. Gojack, of being a "union buster" because the committee plans to investigate the UE in Fort Wayne on Feb. 21 just prior to a union election at the Magnavox plant.

George Goldstein, Washington representative for the union, appeared before the committee to urge postponement of the hearing.

Goldstein stalked angrily from the hearing room, however, when Walter demanded that he address the committee under oath. The union leader refused to have his discussion recorded.

Walter declared: "You're not going to say anything unless its under oath—I want a record—because I've got a telegram indicating your crowd would stop at nothing."

Walter told Goldstein: "Nobody on this committee is interested in busting unions . . . we all have records . . .

but all of us are interested in your union going out of business because it is not good for the United States."

Moulder, who will head the Fort Wayne probe, also asserted the committee should use its influence to break the UE.

Would Welcome Committee

Goldstein told Walter: "We will welcome your committee there (Fort Wayne.)" He said, however, the hearing should be held off until the election, slated for Feb. 24, is over.

The Fort Wayne investigation was sparked by the refusal of David Mates, a UE official from Detroit, to testify before the committee in December.

Hearings Open Here Monday at 10 A.M.

Hearings here by the House Un-American Activities Committee will get underway at 10 a.m. Monday in the Federal Courtroom on the second floor of the Fort Wayne Post Office Building.

Principal witnesses due to be called by the investigating subcommittee are John T. Gojack of Fort Wayne, District 9 president of the independent United Electrical Workers Union, and David Mates of Detroit, UE international representative.

Rep. Walter (D-Pa), chairman of the parent committee, said the hearings here are a "hang over" from the session held last December in Detroit, at which time Mates was unable to appear because of illness.

Thomas W. Beale Sr., committee clerk, said yesterday there is no way of telling how many days the hearings may continue.

Serving as counsel for the subcommittee in its apperance here will be Frank Tavener, Virginia attorney who served as prosecutor of Japan's wartime premier, Tojo during the war criminal trials at the conclusion of World War II.

The committee hearing is scheduled to get under way just three days prior to a representation election at Magnavox ordered by the National Labor Relations Board to straighten out an intra-union wrangle which has been hanging fire at the plant since January, 1953.

Protests Filed

Gojack reported last night that several Fort Wayne UE units sent vigorous protests to Washington yesterday on the matter of a federal subcommittee's proposed visit to Fort Wayne.

He said the essence of telegrams sent to Rep. Francis Walter (D-Pa), chairman of the House Un-American Activities Committee, and three members of the investigating subcommittee due to hold hearings here starting Monday, pointed up the fact that the hearings at this time, coming three days before a representation election at the Magnavox Co. here, are strongly prejudicial against the UE's case.

[fol. 456] Filed July 12, 1956. Harry M. Hull, Clerk

Defendant's Exhibit No. 3

Statement of Objections to Hearing and Motion to Vacate Subpenas

John Thomas Gojack, Julia Jacobs, and Lawrence Cover, having been subpenaed by the House Committee on Un-American Activities for appearance at a hearing on February 28, 1955, respectfully move to vacate the said subpenas and to set aside the hearing on the following grounds:

1. The Committee is not engaged in a legislative investigation for a bona fide legislative purpose. This Committee is limited under Article I, Section 1 of the United States Constitution to the exercise of legislative powers. The Chairman of the Committee has previously announced as is shown by the newspaper clippings attached hereto that the purpose of the hearing is to force the United Electrical, Radio and Machine Workers of America (UE) "out of business" and that with respect to the movants Gojack, and Jacobs "to bring out the facts that they are card carrying Communists. The rest is up to the community".

This purpose is not legislative in character and hence is outside the Committee's powers.

2. If the Committee seeks to inquire into activities of a

criminal nature, no specific charges have been furnished the movants and no evidence has been offered that they have violated any law.

In any event, the power to inquire into crime is one which is confided exclusively to courts and grand jury-s under Article I Section 3 of the Constitution.

3. The purpose of breaking a union, is not one which is authorized by the Committee's basic resolution, Public Law 601.

4. Even if such a purpose were authorized by the Committee's basic resolution, the resolution as so construed and applied would constitute a violation of the free speech and assembly guarantees of the First Amendment to the Constitution.

[fol. 457] 5. The Committee's basic resolution is in any event unconstitutional because no person can determine from it the boundaries of the Committee's power.

6. The Committee intends, as its chairman has announced, to exact compulsory disclosure of movants' political beliefs and affiliations. The First Amendment forbids this particularly where as here there is no overriding legislative justification for such inquiry.

Respectfully submitted, Frank J. Donner, Counsel for Lawrence Cover, Julia Jacobs, and John Thomas Gojack.

[fol. 458] Statements of Committee Chairman Dealing With Purpose of Hearing Scheduled for February 28, 1955.

1. Newspaper clipping of Ft. Wayne Journal Gazette headed "House Un-American Committee Wants UE 'Out of Business' ".

House Un-American Committee Wants UE 'Out of Business'

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[fol. 459] 2. Newspaper clipping from St. Joseph Herald

Press dealing with intention of Committee to show alleged Communist affiliation of subpenaed witnesses.

The Herald-Press
"Reaches the Homes in Berrien County"
St. Joseph, Mich., Monday, February 21, 1955

Red Probe May Upset UE Vote

John Gojack, Julie Jacobs Face Probers

Congressman Out to Prove UE Officials Card-Carrying Commies

A house un-American activity committee hearing in Washington today may have a direct influence on the upcoming national labor relations board hearing at Whirlpool corporation where the Red-tinted United Electrical workers is on the defensive.

Subpoenaed are John Gojack, UE District 9 president, and Miss Julie Jacobs, office secretary of Whirlpool Local 931.

"We intend to bring out the facts that they are card carrying Communists," declared Rep. Francis Walter (D-Pa.) chairman of the un-American activities committee. "The rest is up to the community."

Challenged Again

The hearing will precede by three days the NLRB representative election at Whirlpool. UE, which has survived the blasts of "Communistic" before, is once again being challenged by IUE-CIO and IAM-AFL.

In a colorful battle in 1953, UE repulsed both unions. A NLRB hearing in St. Joseph recently was responsible for the March 2 election.

Gojack, Miss Jacobs, and Dave Mates, UE International representative, were scheduled to appear before the committee in Fort Wayne, Ind., today. The session was delayed one week and then transferred to Washington.

Gojack had accused Rep. Walter's committee of "union busting." Its original hearing for today came as Magnavox, of Fort Wayne, a UE controlled plant, faced an NLRB later this week.

Replies to Union

Rep. Walter's reported reply to UE's "union busting" charge was: "Nobody on this committee is interested in busting unions. But all of us are interested in your union going out of business because it is not good for the United States."

The Washington hearing was described as a "hang over" from a session in Detroit recently when Mates failed to appear. Mates bolstered with a physicians' excuse, said he was ill. He was reportedly conducting campaigns for UE at the same time, however.

Rival unions, IUE and IAM, once again are opening an all-out attack against the beleaguered UE.

Worst Losses

Three of the UE's worst losses in the past year occurred when the independent union was thrown out of General Electric, Schenectady, N. Y., Vickers, Inc., Detroit, and Westinghouse, Trenton, N. J.

UE has moved key personnel into the twin city area to aid in the battle for survival. They are Tom Flannagan, Ed Landy and Ben Riskin, all of who were linked to Red activities by the challenging unions.

[fol. 460] Filed July 12, 1956. Harry M. Hull, Clerk

DEFENDANT'S EXHIBIT No. 8

EXTRACTS FROM THE CONGRESSIONAL RECORD

83 Cong. Rec. 7570 (1938).

Mr. Dies: * * *

I am not in a position to say whether we can legislate effectively in reference to this matter, but I do know that exposure in a democracy of subversive activities is the most effective weapon that we have in our possession. Always we must keep in mind that in any legislative attempt to prevent un-American activities, we might jeopardize fundamental rights far more important than the objective we seek, but when these activities are exposed, when the light of day is brought to bear upon them, we can trust public sentiment in this country to do the rest.

91 Cong. Rec. 275 (1945).

Mr. Rankin: • • •

I serve notice on the un-American elements in this country now that this "grand jury" will be in session to investigate un-American activities at all times.

92 Cong. Rec. 3767 (1946).

Mr. Mundt: • • •

The country might as well as be told first as last that our committee is in this fight to expose un-American activities to the finish.

92 Cong. Rec. 5217-5218 (1946).

Mr. Mundt: • • •

Our task—to which you Members of this House assigned us—is to seek out and to expose those activities which although legal are none the less un-American, subversive, and contrary to the American concept.

• • • • • • • • •

It was suggested here by the gentleman from New York (Mr. Klein) that we do not need a committee of this kind because the FBI could do this job. The FBI, however, is limited to the handling of illegal activities, to activities which are in direct violation of the law and to assignments by the Attorney General. As Mr. Davis points out in his letter, there is a field in which our committee must operate, [fol. 461] dealing with factors, people, and policies of organizations engaging in actions which are un-American even though their activities are legal. Because of the extreme privilege of free press and free speech they can do much harm if the nefarious purposes and people lurking behind their high-sounding organizational names remain unexposed.

99 Cong. Rec. 1359 (1953).

Mr. Kearney: • • •

Let me say this to the gentleman that this committee was constituted to seek out communism, no matter where it be, in this country, and that is what we are going to do. We are not going on any witch hunt as some call it, but we are

going to investigate its ramifications and bring it to light wherever it may be.

99 Cong. Rec. 1360 (1953).

Mr. Jackson: • • •

We are interested instead in finding out who the Communists are and what they are doing to further the Communist conspiracy.

• • • • • • •

Mr. Kearney: • • •

We agree with that and we are going to find the Communists in education and elsewhere throughout this country, if this body will go along and give us the funds we need to do the job.

99 Cong. Rec. 1371 (1953).

Mr. Jackson: Mr. Speaker, during the past 3 years, the Committee on Un-American Activities, of which I am a member, has been conducting an investigation into the extent of Communist infiltration of the Hollywood motion-picture industry. During this period, the committee has exposed several hundred persons who were employed in the motion-picture industry and who were or are members of the Communist Party.

[fol. 462] 99 Cong. Rec. 1640 (1953).

Mr. Doyle: • • •

Mr. Speaker, this is what the jury in Los Angeles and in these other cities had found these conspiratorial, totalitarian, unpatriotic, hypocritical, dangerous, ungrateful citizens to be guilty of. This is the sort of people in our Nation whom I, as a member of the Un-American Activities Committee, am primarily interested in uncovering to the light of day with their dastardly conceived plans against our American freedoms.

99 Cong. Rec. 1820 (1953).

Statement By Representative Clyde Doyle, of California, Member of Armed Services Committee and House Un-American Activities Committee.

• • •

However, the activities of all subversive individuals and groups must be exposed at the earliest possible date to public knowledge and spotlight.

99 Cong. Rec. 1985 (1953).

Mr. Moulder: • • •

The Committee on Un-American Activities has and will continue to expose communism. It has an excellent record of public service in exposing and warning the American people of the evils of communism, and we must not permit baseless propaganda to injure the work of the committee.

99 Cong. Rec. 2019 (1953).

Mr. Jackson: • • •

The work of the House Committee on Un-American Activities is one designed to give the American people a continuing picture of the Communist Party at work; to expose its propaganda efforts, and to inform citizens of organizations and individuals dedicated to the destruction of the American Republic. Its investigations are confidential only to the extent necessary to determine facts. Its hearings are public, open to all informational media, and its millions of publications go directly to the people of this Nation.

[fol. 463] 99 Cong. Rec. 2130 (1953).

Mr. Velde: • • •

The favorable correspondence received contained generally the following types of statements and issues:
No. 1. Demands and requests that an investigation be made of individual Communists in the religious field: To these loyal and sincere citizens, may I say that I feel Communists should and will be ferreted out and reported to the Congress and to the people, wherever they may be found.

100 Cong. Rec. 2284 (1954).

Mr. Velde: • • •

The Congress will certainly recognize that it has given a very broad mandate to the committee to investigate subversive propaganda and activities. I can say with pride that the committee has confined itself well within the limits of this mandate. The committee has investigated individ-

uals and not groups. It has found that these individuals have been in many varied groups and occupations within the United States. The committee has, however, made no study of the various groups which these individuals have infiltrated. There has been no investigation of education, religion, labor, or any other field, but there were individuals named by witnesses before the committee who are associated with these fields.

Even though the Communist Party in the United States has to a great extent gone underground, the House Committee on Un-American Activities, during the past year, received from witnesses the identification of more than a thousand individuals who had been members of the Communist Party, and again I should like to point out that these identifications have been made public and, with but one exception, none have come forward and denied that they have been members of the Communist Party.

100 Cong. Rec. 2285 (1954).

Mr. Velde:

That is the distinction that I made between it and the FBI. The work of the two is in no way comparable. The Chief [fol. 464] point of differences is the fact that the FBI cannot because of the secret nature of its work make any of the information relative to subversion public unless it is in a criminal case, whereas our Committee on Un-American Activities can make public the information that it obtains.

* * * * * * *

Mr. Walter: * * *

I think the gentleman is overlooking one very important fact, namely, that the Committee on Un-American Activities has a very large library, and it furnishes to various Government agencies information that those agencies have not obtained. That is true even of the FBI. So that a large part of the money appropriated to the Committee on Un-American Activities is expended for filing clerks who engaged in the preparation of this very large library.

100 Cong. Rec. 2285 (1954).

Mr. Doyle: * * *

This is no time to economize—not a nickel's worth—in the field of exposing subversive activities wherever they are in my judgment.

100 Cong. Rec. 2286 (1954).

Mr. Doyle: * * *

Furthermore, there is no time like the immediate present to help uncover and expose to the daylight of patriotic American citizens those who continue directly or indirectly as active members or participate in the Communist conspiracy to eventually overthrow the constitutional form of Government of our beloved Nation by force and violence.

100 Cong. Rec. 12257-12258 (1954).

Mr. Gross:

Mr. Chairman, in conclusion I submit the following report from the House Un-American Activities Committee:

[fol. 465] [Information from the files of the Committee on Un-American Activities United States House of Representatives]

May 24, 1954

For: Honorable H. R. Gross

Subject: Herman F. Reissig

[fol. 466] Filed Jul. 12, 1956. Harry M. Hull, Clerk

DEFENDANT'S EXHIBIT No. 9

STATEMENTS IN THE PRESS ATTRIBUTED TO REPRESENTATIVE HAROLD H. VELDE, FORMER CHAIRMAN OF THE HOUSE UN-AMERICAN ACTIVITIES COMMITTEE, AND REPRESENTATIVE FRANCIS E. WALTER, PRESENT CHAIRMAN OF THE HOUSE UN-AMERICAN ACTIVITIES COMMITTEE

The New York Times, February 9, 1953

Philadelphia, Feb. 8 (AP)—Representative Harold H Velde, Republican of Illinois, chairman of the House Un-American Activities Committee, said today "It's a lot bet-

ter to wrongly accuse one person of being a Communist than to allow so many to get away with such Communist acts as those that have brought us to the brink of World War III."

The New York Times, February 12, 1953

Washington, Feb. 11—The Senate group, Mr. Velde said, is searching for "organized" communistic activity in the educational system and dealing with institutions. His committee will continue to concentrate upon "individual members of the Communist party who in the past and possibly at the present time, are engaged in the field of education."

New York Times 1953, February 19, 1953, Page 10

Washington, February 18.—* * * He also announced that despite "scattered" protests by educators, college administrators generally had cooperated. He insisted the committee was not investigating education but was interested only in "tracking down individual communists in the education field."

The New York Times, Thursday, February 26, 1953, Page 16

Washington, February 25.—* * * The House Committee, headed by Representative Harold H. Velde, Republican of Illinois, appeared to be highly conscious of criticism in it. In [fol. 467] an opening statement, Mr. Velde insisted that the investigation was no different from preceding inquiries into labor unions and other areas. He emphasized that the committee was not seeking to investigate institutions as such, but to ferret out communists operating within them.

The New York Times, Friday, March 13, 1953—12:5

Washington, March 12—* * * In confirming the committee's action, Mr. Velde declared:

"I never did propose an investigation of the clergy nor did I propose an investigation of churches. We are interested in investigating individual Communists—whether they be found in education, in labor, in the clergy or in the legal profession."

The New York Times, Friday, March 20, 1953—11:3 at 4

Mr. Velde * * * referred also to another controversial inquiry, that of communism in schools, and said he was

not investigating the institutions but individual members of their faculty.

The New York Times, Saturday, July 4, 1953—1:6 at 4:7

Representative Velde, the committee chairman, was noncommittal on this development, which had been viewed in some Congressional quarters as the start of an inquiry such as Mr. Velde had said was "a possibility," although he had insisted that he meant no investigation of churches or religions.

Asked what his position was, Mr. Velde said: "We are seeking the identification of Communists, former Communists and those who now sympathize with communism or [fol. 468] have in the past, regardless of the field in which they operate."

The New York Times, Wednesday, July 8, 1953—13:1 at 2

Mr. Clardy said the committee was not investigating or attacking the clergy or the churches or religion but was trying to expose Communists in any field, "whether in the clergy or in my own [the law] or any other group."

The New York Times, Thursday, October 29, 1953—22:4

Washington, Oct. 28—* * * Representative Harold V. Velde, Republican of Illinois, who heads the committee, said the hearings scheduled for Nov. 16 and 17 would "deal exclusively with individual teachers in the Philadelphia area who have been identified as present or past members of the Communist Party."

The New York Times, Thursday, January 28, 1954—1:4 at 16:5

The House Un-American Activities Committee moved into the picture this afternoon. Its chairman Harold H. Velde, Illinois Republican, suggested that the V.F.W. supply names of suspected Communists to the committee as well as to the F.B.I.

"We welcome the cooperation of such patriotic organizations," he declared.

The New York Times, Sunday, February 7, 1954. 16:6

Washington, Feb. 6 (AP)—The House Un-American Activities Committee said today it had deleted the Consumers'

Union from the list of organizations it describes as subversive.

It invited other organizations to take steps similar to those it said were taken by the Consumers' Union to obtain clearance. It did not state what the steps were.

[fol. 469] The committee devoted a part of its annual report to the Consumers' Union. The organization publishes Consumer Reports which carries articles on the quality of products for the guidance of buyers.

The committee said it cited the Consumers' Union in 1944 on the basis of information in committee records. It said the organization initiated steps "to clarify the situation."

The Washington Daily News, Friday, November 19, 1954.

JOHN Q. WILL BE INVITED TO HEARINGS

Rep. Francis E. Walter (D., Pa.), who will take charge in the new Congress of House activities against communists and their sympathizers, has a new plan for driving Reds out of important industries.

He said today he plans to hold large public hearings in industrial communities where subversives are known to be operating, and to give known or suspected commies a chance in a full glare of publicity to deny or affirm their connection with a revolutionary conspiracy—or to take shelter behind constitutional amendments.

By this means, he said, active communists will be exposed before their neighbors and fellow workers, "and I have every confidence that the loyal Americans who work with them will do the rest of the job."

Invite Public

Hearings of a similar nature have been held in local areas, but Rep. Walter wants to make them bigger, with the public being urged as well as invited to attend.

"We will force these people we know to be communists to appear by the power of subpena," Rep. Walter said, "and will demonstrate to their fellow workers that they are part of a foreign conspiracy."

[fol. 470] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,464

JOHN T. GOJACK, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

Appeal from the United States District Court for the District of Columbia

OPINION—Decided June 18, 1960

Mr. Frank J. Donner, of the bar of the Court of Appeals of New York, pro hac vice, by special leave of court, with whom Mr. David Rein was on the brief, for appellant.

Miss Doris Hope Spangenburg, Attorney, Department of Justice, for appellee. Messrs. Oliver Gasch, United States Attorney, Lewis Carroll, John D. Lane, and William Hitz, Assistant United States Attorneys, were on the brief, for appellee. Mr. Harold D. Rhynedance, Jr., Assistant United States Attorney, also entered an appearance for appellee.

Before WASHINGTON, BASTIAN and BURGER, Circuit Judges.

BASTIAN, Circuit Judge: Appellant, an international vice president of United Electrical, Radio and Machine Workers of America and president of Local No. 9 of that or-[fol. 471] ganization, was indicted under a nine-count indictment for contempt of Congress in violation of 2 U.S.C. § 192. He was tried by the court, a jury trial having been waived. Count One was dismissed when the United States Attorney was obliged to elect. On Counts Two and Five he was found not guilty. He was convicted on six counts and sentenced. Judgment was stayed pending this appeal.

The indictment charges that on February 28, 1955 and on March 1, 1955, in the District of Columbia, a subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings

pursuant to the Legislative Reorganization Act of 1946, Section 121 (q), 60 STAT. 828, and to H. Res. 5, 84th Congress, that appellant appeared as a witness before that Sub-committee on the dates and at the place mentioned, that he was asked questions pertinent to the subject matter then under inquiry, and that appellant then and there unlawfully refused to answer those questions.[1] The Com- [fol. 472] mittee was considering the possible need for legislation to deal with alleged activities of Communists in the field of labor, including methods of infiltration of labor organizations and the dissemination of Communist propaganda. With respect to the foregoing, the Committee deemed it pertinent to its inquiry to ascertain appellant's awareness of the existence thereof, his knowledge of certain named persons as having been active in certain

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[1] The specific questions were:

1. Were you ever a member of the Communist Party? [Dismissed by court on election of U. S. Attorney.]
2. Were you then a member of the Communist Party in 1948, at any time during the year 1948? [Found not guilty.]
3. Are you now a member of the Communist Party?
4. You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson.
5. Are you acquainted with Henry Aron, A-r-o-n? [Found not guilty.]
6. Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron ever appear and address a group of people when you were present?
7. May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party?
8. Did you take active part in the peace pilgrimage to Washington which was organized by one of the "front" organizations known as the American Peace Crusade?
9. What method was used to get you as an original sponsor? [That is, original sponsor of the American Peace Crusade.]

groups and, as well, his connection with and participation in an organization known as the American Peace Crusade, an organization believed by the Committee to be Communist-dominated. Appellant's refusal to respond to the questions noted led to the citation for contempt.

The case was extensively heard in the District Court by Judge Pine (now Chief Judge). Thereafter the trial judge found "that each of the questions involved was pertinent to the question under inquiry, which was authorized by the statute and resolution, and that they were pertinent to a valid legislative purpose." He held the fact that the inquiry resulted in exposure did not defeat its validity.

As to Counts Two and Five, the court held that appellant had given adequate reasons for not answering the questions there involved, including claimed protection under the First Amendment of the Constitution, and that the Committee did not disallow the objection and did not demand an answer, notwithstanding the objection. Therefore, under *Quinn v. United States*, 349 U.S. 155 (1955), the court found appellant not guilty on Counts Two and Five.

As to Count Three, Four, Six, Seven, Eight and Nine, the court held there was no express claim that appellant [fol. 473] declined to answer under the Fifth Amendment and that none could reasonably be inferred. He further found that the grounds given by appellant were insufficient in law to justify his refusal to answer and that, upon being directed by the Committee to answer, he had refused to do so. The court held that insofar as these counts were concerned they did not come within the *Quinn* rule, and found that appellant intentionally and unlawfully refused to answer the questions propounded therein, that each and every element of the offense charged had been established beyond a reasonable doubt, and that, consequently, appellant was guilty on Counts Three, Four, Six, Seven, Eight and Nine. This appeal followed.[2]

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[2] This case and seven other contempt of Congress cases decided this day (all enumerated in the order set forth below) were originally set in this court for hearings *en banc* by order dated January 22, 1958, but, due to the then pending review in the Supreme Court of *Barenblatt* v.

[fol. 474] There is no serious factual dispute between the parties but two legal points are more seriously pressed than others.

United States, 102 U.S.App.D.C. 217, 252 F.2d 129, *cert. granted*, 356 U.S. 929 (1958), which involved some of the same issues, we determined not to set them for argument until the Supreme Court had decided *Barenblatt*. In its opinion dated June 8, 1959 (360 U.S. 109), the Supreme Court affirmed this court in upholding Barenblatt's conviction. Thereafter, this court, by its order of September 25, 1959, rescinded its order for the *en banc* hearings and directed counsel in the eight cases to file memoranda with respect to the effect of the Supreme Court's opinion in *Barenblatt* and any other opinions of that Court in recent relevant cases. After receipt of the memoranda, this case and No. 13,737, *Shelton* v. *United States*, were heard by a panel of this court chosen by lot. Thereafter, the entire court entered the following order dated January 29, 1960:

> "It appearing that [No. 13,464, No. 13,529, No. 13,694, No. 13,737, No. 14,057, No. 13,656, No. 13,871 and No. 13,925] involve, principally, questions the same as, or similar to, the questions involved in *Watkins* v. *United States*, 354 U.S. 178 (1957), and in *Barenblatt* v. *United States*, and that this court, by order dated May 7, 1958, directed that the hearing of these cases be deferred until after the decision of the Supreme Court in the *Barenblatt* case; and it appearing that the opinion and decision of the Supreme Court in that case was rendered June 8, 1959, 360 U.S. 109, and the mandate therein having been received in this court on October 22, 1959; and it further appearing that this court, on September 24, 1959, determined that in the interest of the orderly administration of justice these cases be heard by one division of the court, and the full court having thereupon on that date drawn by lot a division for that purpose, which division was composed of Circuit Judges Washington, Bastian and Burger, it is this day
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> "ORDERED by the court that the remaining six of the above-entitled cases be set for argument before the division of the court thus constituted, as above named,

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Appellant here relies in large part on the question "whether or not the committee's purpose was non-legislative in character, in the sense that the expressed aim of the hearing was to do injury to appellant and the union which he represented at that time."

[fol. 475] We think the finding of Judge Pine that the purpose of the Committee was legislative is amply supported. The record clearly demonstrates that the Committee hearing was one constituting a continued investigation which the Committee was conducting into Communist activities in the labor field, including infiltration into labor organizations and Communist propaganda.[3] Hearings in

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the dates of the arguments to be set by that division; and it is

"FURTHER ORDERED by the court that the opinion in each of the above-entitled eight cases contain in a footnote thereto a reference to this order."

These eight cases have this day been decided as follows:

No. 13464—Gojack v. United States—*affirmed.*
No. 13529—Russell v. United States—*affirmed.*
No. 13656—Watson v. United States—*reversed.*
No. 13694—Deutch v. United States—*affirmed.*
No. 13734—Knowles v. United States—*reversed.*
No. 13737—Shelton v. United States—*affirmed.*
No. 13871—Liveright v. United States—*affirmed.*
No. 13925—Price v. United States—*affirmed.*

[3] Included in the 1955 Annual Report of the Committee on Un-American Activities to the House of Representatives was the following extract from its report as to the Fort Wayne, Indiana, Area:

"The committee's continued investigation into Communist-dominated unions last year produced documented proof that leaders of such unions have misappropriated workers' dues for Communist Party purposes.

"Proof was obtained in the course of preparations for committee hearings on the activities of District 9 of the United Electrical, Radio, and Machine Workers of America. This district has headquarters in Fort Wayne, Ind., and

[fol. 476] 1955 had been held not only as to the Fort Wayne, Indiana, area (where the hearing in question was originally scheduled) but, as well, in New York City, Newark, New

supervises the affairs of local unions in both Indiana and Michigan.

"The national organization of UE was expelled from the CIO in 1949 because of the union's flagrant subservience to the Communist Party line. The committee scheduled an investigation and hearing in 1955 to determine whether the district office which guides locals in two important Midwest States was continuing the discredited policies of the national UE and placing Communist Party objectives above union interests.

"Investigation preceding the hearings showed that District 9 of UE was in fact operating under the control of Communists and their apologists, with workers' interests only a secondary concern when party purposes conflicted. In the course of this investigation, the committee obtained the official minutes of various meetings of the executive board of UE District 9. These documents contained incontrovertible evidence that the leadership of District 9 had diverted workers' union dues to the support of the Communist Party.

"The minutes obtained by the committee covered meetings of the District 9 executive board held on December 16, 1950; February 2, 1952; March 28, 1952; September 10, 1952; and October 6, 1952. With the record of only five executive board meetings in its possession, the committee can document the appropriation of more than $2,000 to Communist causes. The committee finds this practice particularly reprehensible in view of the fact that this money came from dues paid by workers who sincerely believed they were strengthening legitimate labor objectives. Less than 5 percent of the workers represented by Communist union leadership are members of or sympathetic to the Communist Party. Therefore, 95 percent of the membership of such unions are loyal Americans unwillingly or unwittingly forced to help finance a subversive conspiracy whose ultimate aim would destroy the very concept of a free labor movement.

"Among the Communist organizations to which the district 9 executive board diverted workers' dues are the National Negro Labor Council, which has been cited as sub-

Jersey, Milwaukee, Wisconsin, Los Angeles and San Diego, California, and Seattle, Washington. That the dominant purpose of the investigation was legislative is shown by both the 1954 and the 1955 Annual Reports of the Committee on Un-American Activities to the House of Representatives, both of which report on the hearings. These Annual Reports evidence the continued purpose of the Committee of keeping the Congress informed as to actual Communist conspiracy to infiltrate critical areas and ac- [fol. 477] tivities of our national life as steps in the ultimate effort to destroy our free form of government, and contain the Committee's recommendations for additional legislation, if required. A large collection of material and exhibits is maintained by the Committee in connection with its constituted duties in order to furnish reference service not only to the Committee's own members and staff in its investigations and hearings, but also to every member of Congress who submits a written request for information in that field. More than thirteen hundred such requests were received in 1955.

Under its duty to keep the Congress continually advised as to Communist activities, the Committee, on February 9, 1955, had announced hearings to be held at Fort Wayne, Indiana, at which, according to newspaper accounts, appellant would be a witness. At the time of the announcement neither the Chairman of the Committee, Mr. Francis E. Walter (who did not preside at the hearing at which Gojack testified), nor the Committee counsel,

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versive by the Attorney General, and the Prisoners' Relief Committee, which solicited financial help for Communist Party leaders arrested under the Smith Act. District 9 also 'generously' gave away workers' money to such notorious individuals as Harry Bridges and Harold Christoffel. Harry Bridges had been seeking funds to fight deportation proceedings. Harold Christoffel was active with other Communists in the Allis-Chalmers strike, which attempted to sabotage war production during the Hitler-Stalin pact. He had sought funds to defend himself against a perjury conviction resulting from his appearance before the House Committee on Education and Labor. By no stretch of the imagination can these expenditures serve the interests of any worker or union."

nor the members of the Subcommittee had any knowledge that an N. L. R. B. election was pending at the Magnavox plant in Fort Wayne and had been set for February 24, 1955. It was not until February 10, 1955, that that fact was first made known to any of these persons. On that date Mr. Walter, in Washington, D. C., received from appellant a telegram,[4] the contents of which need not be characterized.

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[4] "Fort Wayne, Ind., 1050 AM

[Stamped FEB 10 11 50 AM]

"Representative Francis Walters
"House Office Bldg Wash DC

"Representative Walters' announcement yesterday of an Un-American Activities Committee hearing in Fort Wayne just prior to a National Labor Relations Board election at the Magnavox plant on February 24th is a flagrant use of a congressional committee for union-busting.

"UE Local 910 has had contractual relations with the Magnavox Company for 17 years with a record of gains and accomplishments for the workers second to none in the electronic industry. The Magnavox Company, aided by two raiding unions, is seeking to oust UE so that seniority rights, higher wages, and other contractual gains under UE can be abolished. With former Un-American Chairman Thomas serving a prison sentence for bribery, we have every right to ask whether the Magnavox Company is paying for this congressional assistance in union-busting. On Monday of this week, three days before Representative Walters announcement, the Magnavox industrial relations director, one George McClaren, announced to employees that the undersigned would be subpoenaed by Walters. In view of Matusow's confessions, we also have the right to know which type Matusow's witness representative Walters and the Magnavox Company would use.

"Last year, Un-American Activities Committee Member Clardy was defeated by the people of Michigan because of his use of this committee against the United Automobile Workers and in behalf of the

[fol. 478] Thereafter, on February 14, 1955, one George Goldstein, a Washington representative of the union, sought [fol. 479] an interview and asked for a continuance of the

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auto corporations. Only last Tuesday, Representative Walters' own constituents repudiated his use of the Un-American Activities Committee in a witch-hunt campaign in behalf of the Ingersoll-Rand Company of Phillipsburg, New Jersey. The workers in that shop on Tuesday voted for UE by a vote of 1,451 against 508 for the IAM-AFL and 204 for the USA-CIO, in spite of Walters' interference in that shop and his lying claim that a 1950 strike there was 'communist-inspired.' Since Congressman Dies, this committee has been used to aid employers in attacks upon CIO, AFL and independent unions. As the late Cardinal Mundelein described it 'If it is really a committee to investigate "Un-American activities" it really should begin with itself.' More recently, the Detroit Free Press, a pro-management paper itself, declared editorially 'The most Un-American activity in the U.S. is the conduct of the congressional committee on un-American activities. It is so viciously flagrant a violation of every element of common decency associated with human liberty that it is a foul mockery on all that Jefferson and Lincoln made articulate in their dreams of a cleaner, finer order on earth. The hypocritically named committee on un-American activities should be abolished at the earliest possible moment by the U.S. Congress and so deeply buried that no other group of publicity-mad zealots could ever be allowed to tarnish with their stench the greatest institution of our democracy, our halls of legislation.'

"Should the House of Representatives permit Walters to so brazenly and openly aid the Magnavox Company in union-busting, the house itself will prove the Detroit Free Press absolutely right in the above-quoted editorial.

"We respectfully request your investigation of Representative Walters' latest action and his obvious tie-up with the Magnavox Company.

"John T Gojack UE District Nine President
41835 South Calhoun St Fort Wayne Indiana"

hearing until after the election scheduled for February 24. Mr. Walter requested that Mr. Goldstein's application for a continuance be made under oath, which Mr. Goldstein refused to do. Appellant urges that the colloquy which developed in this interview is evidence that the Committee was not engaged in furthering a legislative purpose but bent upon attempting exposure. The material parts of that interview relied on are set forth in the margin.[5] [fol. 480] Appellant also relies on the testimony of a newspaper reporter who authored a story in a newspaper to the effect that at the meeting of February 14, 1955, the "House Un-American Activities Committee members frankly stated that they were out to break the alleged Communist-led Independent United Electrical Workers Union." This

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[5] "Mr. Goldstein. Let me say this. This is why I wanted to see you. I wanted to find out whether you and the committee were aware of the fact that this election was scheduled for the 24th.

"Chairman Walter. Not until we received an insulting telegram. After I received that telegram, then I became aware of the fact that there was an election being held. We had previously absolutely no knowledge of it, and the only reason we decided on this hearing there was because these people are there. If they are well enough to be in Fort Wayne, Indiana, working, they are well enough to testify. That is our attitude.

"Mr. Goldstein. Let me just say this. As far as I am concerned, this visit of mine was simply for the purpose of asking the question that I mentioned a moment ago, whether or not you were aware of that election, and if not, to tell you about it, and to say this: that it looked to us and it would look to a lot of people as though the coincidence of the two was more than a coincidence. *Now, I am saying that without accusing you.*

"Chairman Walter. I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States." (Emphasis supplied.)

reporter, however, admitted the accuracy of the stenographically reported conference between Mr. Walter and Mr. Goldstein on February 14 (footnote 5), and testified that he "thought" something more was said by Mr. Walter or another representative of the Committee. From the stenographic record of the conference of Mr. Walter and Mr. Moulder, Chairman of the sub-committee, and Mr. Goldstein, it can be gleaned that Mr. Walter showed some displeasure which, under the circumstances, and having in mind the abusive and insulting telegram (see footnote 4), can be understood and as readily be excused. Congressmen are more fortunate than judges in at least this respect, that when attacked unjustly, they are at liberty to defend themselves and to express themselves forcefully and vigorously.

At first the continuance of the scheduled hearing was denied. Notwithstanding the telegram and the other events we have noted, later a continuance was granted, the hear- [fol. 481] ing was set for February 28, 1955, in Washington, D. C., and a new subpoena was issued and served. On that date Mr. Gojack appeared with his attorney, Mr. Donner, who also represented two other witnesses testifying.[6] At the opening of the session on February 28, Representative Moulder of Missouri, a member of the Subcommittee, made the following announcement as to the purpose of the meeting:

> "This subcommittee was appointed pursuant to the rules of the House as ordered by Francis E. Walter, chairman of the full committee, and it is composed of three members, the Hon. Clyde Doyle, of California, on my right, the Hon. Gordon H. Scherer, of Ohio, and myself as chairman of the subcommittee. Mr. Scherer, of Ohio, is absent and will be present within the next few minutes.
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> "There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party

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[6] These witnesses preceded appellant in testifying on the same day, and it is clear that appellant was present during their testimony as he had been subpoenaed and was sworn immediately after they testified.

to infiltrate labor organizations, and the dissemination of Communist Party propaganda.

"We had expected to hear at this time the testimony of David Mates, an international representative of the United Electrical, Radio and Machine Workers of America. His appearance before this committee was continued twice at his own request. At this time the inability of the United States marshal to effect service of process strongly indicates an effort on the part of Mr. Mates to evade service. This matter will be investigated and, if the facts warrant, the House of Representatives will be requested to cause the issuance of a warrant for his arrest and production before this committee as a witness.

"In the course of the investigation conducted by this committee at Dayton in September 1954, information was obtained indicating that one or more of the witnesses to be heard today should have first-hand knowledge of Communist Party activities in the area of Dayton and elsewhere."

[fol. 482] Attorney Donner, representing the three witnesses, at the time of the calling of the first witness, one Julia Jacobs, presented a motion, entitled "Statement of Objections to Hearing and Motion to Vacate Subpoenas," which is set forth in the margin.[7] The motion was not for-

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[7] "John Thomas Gojack, Julia Jacobs, and Lawrence Cover, having been subpenaed by the House Committee on Un-American Activities for appearance at a hearing on February 28, 1955, respectfully move to vacate the said subpenas and to set aside the hearing on the following grounds:

"1. The Committee is not engaged in a legislative investigation for a bona fide legislative purpose. This Committee is limited under Article I, Section 1 of the United States Constitution to the exercise of legislative powers. The Chairman of the Committee has previously announced as is shown by newspaper clippings attached hereto that the purpose of the hearing is to force the United Electrical, Radio and Machine Workers of America (UE) 'out of business' and that with respect to the movants Gojack, and

[fol. 483] mally acted on until the following day, when it was formally denied. That it was in fact denied is clear from the fact that the witnesses represented by Mr. Donner were called, sworn and queried. It is to be noted that Mr. Donner was present throughout the hearing and was given the privilege of conferring with his clients at any time, and did from time to time confer with them.

Further as evidence that the object of the Committee was not "exposure" is the conduct of the members of the Subcommittee during the course of the hearing. For instance, when Gojack objected to the several questions relating to his membership in the Communist Party on the ground that these questions were put to him "to judge me guilty without benefit of trial," Mr. Doyle, member of

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Jacobs 'to bring out the facts that they are card carrying Communists. The rest is up to the community'.

"This purpose is not legislative in character and hence is outside the Committee's powers.

"2. If the Committee seeks to inquire into activities of a criminal nature, no specific charges have been furnished the movants and no evidence has been offered that they have violated any law.

"In any event, the power to inquire into crime is one which is confided exclusively to courts and grand jurys under Article I Section 3 of the Constitution.

"3. The purpose of breaking a union, is not one which is authorized by the Committee's basic resolution, Public Law 601.

"4. Even if such a purpose were authorized by the Committee's basic resolution, the resolution as so construed and applied would constitute a violation of the free speech and assembly guarantees of the First Amendment to the Constitution.

"5. The Committee's basic resolution is in any event unconstitutional because no person can determine from it the boundaries of the Committee's power.

"6. The Committee intends, as its chairman has announced, to exact compulsory disclosure of movants' political beliefs and affiliations. The First Amendment forbids this particularly where as here there is no overriding legislative justification for such inquiry."

Congress from California and a member of the Subcommittee, used this language:

> "We are not adjudging anybody guilty. No, Mr. Gojack. Of course, if you think it is a matter of criminal intent and participation in a conspiracy to be a member of the Communist Party, then I understand why you might conclude that you are being found guilty without a trial. But we are not here finding anybody guilty. We are here as a group of Congressmen trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president. That is what we are here for, young man; not to find you guilty of anything, but to find out the extent to which you know of Communist domination or control in your union, if there is such domination and control or infiltration."

With regard to the discussion of Gojack's connection with the American Peace Crusade, the following excerpt from the hearing is of interest:

> [fol. 484] "Mr. Tavenner [counsel for the Committee]: I want to make it clear, Mr. Gojack, that I am not interested in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power. That is what I am interested in. My questioning of you is to determine what knowledge or information you had on the subject.
>
> "Mr. Moulder. May I say, Mr. Tavenner, in connection with your statement, that the so-called peace moves on the part of the Soviet Union were being instigated over here as propaganda so as to prevent any opposition to their aggression and domination of the free world.
>
> "Mr. Doyle. Mr. Chairman, may I add to those two fine statements that I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union

> that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions, if you know anything about it, the extent to which they were using it then and are using it now for their conspiratorial purposes."

Exposure no doubt resulted from the inquiry. But no one can fairly read the record without perceiving that the dominant purpose of the Committee was a legislative one, namely, to learn the extent of Communist infiltration or domination of labor unions. The court found:

> "... that each of the questions involved was pertinent to the question under inquiry, which was authorized by the statute and resolution, and that they were pertinent to a valid legislative purpose, and that the committee was engaged in a valid legislative purpose. The fact that the inquiry resulted in exposure does not defeat the validity of the inquiry."

No specific findings in addition to those just recited were requested by appellant. FED. R. CRIM. P. 23(c). Accord-[fol. 485] ingly, we rest on the general finding of guilty, which necessarily comprised a finding against appellant on all essential issues.

II

The second question pressed by appellant is whether the rule of the *Watkins* case[*] applies and, if it does apply, whether it was followed in this case. It will be recalled that *Watkins* decided that a witness, having been summoned before a congressional committee, is entitled under appropriate circumstances to a statement of the purpose of the interrogation and an explanation of pertinency.

We think the *Watkins* rule was fully complied with. First, the subject matter of the hearing appeared "with undisputable clarity"; second, there was no "objection of the witness [or his counsel] on grounds of pertinency;" and, finally, the explanation of the Chairman not only was meaningful, but adequately and correctly described the topic under inquiry. It is not to be supposed that

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[*] *Watkins* v. *United States*, 354 U.S. 178 (1957).

every question when put must be accompanied by "connective reasoning whereby the precise question[s] asked relate to it [i.e., the explanation]." The word "pertinency" or its equivalent nowhere appears in the objections. Appellant's attorney presented his objections to the hearing; no question of pertinency was raised.

On this subject of pertinency, it is scarcely possible to imagine a case more closely akin to *Barenblatt* that the present one. There, as here, and contrary to the situation in *Watkins*, the question under inquiry was disclosed in an illuminating manner; there, as here also, contrary to the situation in *Watkins*, the questions were not amorphous on their face, nor were they "clearly foreign to the alleged subject matter of the investigation—'Communism in labor.'" There, as here, the motion filed by appellant's counsel "at best constituted but a contemplated objection [fol. 486] to questions still unasked, and buried as they were in the context of [appellant's] general challenge to the power of the Subcommittee they can hardly, within the meaning of what was said in *Watkins*, *supra*, at 214-215, be considered adequate, to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection." *Barenblatt*, 360 U.S. at 124.

We think that, with the change of names, the following quotation from the Supreme Court's opinion in *Barenblatt* disposes of the contention of Gojack on the pertinency issue:

> "We need not, however, rest decision on petitioner's failure to object on this score, for here 'pertinency' was made to appear 'with undisputable clarity.' [*Watkins*, at 214.] First of all, it goes without saying that the scope of the Committee's authority was for the House, not a witness, to determine, subject to the ultimate reviewing responsibility of this Court. What we deal with here is whether petitioner was sufficiently apprised of 'the topic under inquiry' thus authorized 'and the connective reasoning whereby the precise questions asked relate[d] to it.' [*Id.*, at 215.] In light of his prepared memorandum of constitutional objections there can be no doubt that this petitioner was well aware of the Subcommittee's author-

ity and purpose to question him as it did . . . In addition the other sources of this information which we recognize in *Watkins*, *supra*, at 209-215, leave no room for a 'pertinency' objection on this record. The subject matter of the inquiry had been identified at the commencement of the investigation as Communist infiltration into the field of education. Just prior to petitioner's appearance before the Subcommittee, the scope of the day's hearings had been announced as 'in the main communism in education and the experience and background in the party by Francis X. T. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York.' Petitioner had heard the Subcommittee interrogate the witness Crowley along the same lines as he, petitioner, was evidently to be questioned, and had listened to Crowley's testimony identifying him as a former [fol. 487] member of an alleged Communist student organization at the University of Michigan while they both were in attendance there. Further, petitioner had stood mute in the face of the Chairman's statement as to why he had been called as a witness by the Subcommittee. And, lastly, unlike *Watkins*, *id.*, at 182-185, petitioner refused to answer questions as to his own Communist Party affiliations, whose pertinency of course was clear beyond doubt.

"Petitioner's contentions on this aspect of the case cannot be sustained."

In sum, nowhere does it appear that appellant was without knowledge of the real purpose of the hearing or of the pertinency of the questions. The subject matter of the hearing was made to appear "with undisputable clarity" in the statement of Mr. Moulder, Chairman of the Subcommittee, and in the course of the questioning.

III

The trial judge found, as above stated, that the grounds given by appellant were insufficient in law to justify his refusal to answer and that, upon being directed to answer,

he had refused to do so; that the counts on which appellant was found guilty, namely, Counts Three, Four, Six, Seven, Eight, and Nine, did not come within the *Quinn* rule and that he had intentionally and unlawfully refused to answer the questions comprising those counts. We agree.

Not only did appellant refuse to answer questions propounded but, as well, his attitude before the Subcommittee was abusive, insulting and contemptuous of the Committee and its members. The record of the hearing is replete with examples of that attitude but a few will suffice: He accused the Committee of using paid liars with which to "frame" witnesses; "I do not know what 'paid liars' and 'forgers' that you may have"; "I do not know what paid liar you have here to do a Matusow job on me"; "I haven't had the opportunity to vote myself a $10,000 [fol. 488] raise"; "My answer to the question is when you have paid liars like Matusow, paid liars like Strunk, and paid liars like this lunatic Cecil Scott, around—." "Witch-hunting" by the Subcommittee was likewise charged by Gojack.

IV

We have examined the other grounds urged for reversal and find them likewise without merit.[9]

Affirmed.

---

[9] Assuming, *arguendo*, that conviction on some of the counts is open to question, we note that appellant's general sentence on all counts did not exceed the penalty that could have been imposed for any one count. Accordingly, "the judgment below must be upheld if the conviction upon any of the counts is sustainable." *Barenblatt, supra*, 360 U.S. at 115. In the present case, Counts 3, 4, and 7 are clearly sustainable. See *Barenblatt, supra, passim*. Cf. *United States* v. *Hines*, 256 F.2d 561 (2d Cir. 1958), which has no application here.

[fols. 489-489a] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,464

Criminal 1215-55

v.

JOHN T. GOJACK, Appellant,

UNITED STATES OF AMERICA, Appellee

Appeal from the United States District Court for the District of Columbia.

Before: Washington, Bastian and Burger, Circuit Judges.

JUDGMENT—June 18, 1960

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof it is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Circuit Judge Bastian.

Dated: June 18, 1960.

[fol. 490] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 491] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1960

JOHN T. GOJACK, Petitioner,

vs.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—July 12, 1960

Upon Consideration of the application of counsel for petitioner, It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 17, 1960.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 12th day of July, 1960.

[fol. 492] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1960

No. 313 Misc.

JOHN T. GOJACK, Petitioner,

vs.

UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI —June 5, 1961

On Petition for Writ of Certorari to the United States Court of Appeals for the District of Columbia Circuit.

On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1014 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 5, 1961.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 128

JOHN T. GOJACK,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 128

JOHN T. GOJACK,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

The decision of the District Court is not reported; it appears in the record at Tr. 449-451.[1] The opinion of the Court of Appeals (R. 215-232) is reported at 280 F. 2d 678.

---

[1] The symbol "Tr." refers to the typewritten transcript of the record; "R." refers to portions of the record which have been presented and "Hearings" to the record of the hearings at which petitioner appeared, published by the Committee on Un-American Activities under the title, "Investigation of Communist Activities in the Fort Wayne, Indiana Area" and received in evidence as Government Exhibit 8 (Tr. 58).

Jurisdiction

The judgment of the Court of Appeals (R. 233) was entered on June 18, 1960. By order of Mr. Justice Black, entered on July 12, 1960 (R. 234), the time within which a petition for writ of certiorari might be filed was extended to August 17, 1960. The petition for a writ of certiorari was filed on August 16, 1960, and together with a motion for leave to proceed *in forma pauperis* was granted on June 5, 1961 (R. 235). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Does the Committee on Un-American Activities have the power under the Constitution to use its procedures for the purpose of attacking and exposing individuals and organizations as an end in itself and divorced from its power to investigate for legislative purposes?

2. If the Committee lacks the independent power of exposure, was the inquiry in this case undertaken for such non-legislative purpose?

3. If the Committee has the power to engage in such exposure activities as are reflected in the record in this case, does the contempt statute involved here, Title 2 U.S.C., Section 192, authorize punishment for refusals to answer all questions or only those questions which are in furtherance of an investigation for legislative purpose?

4. Did the specific questions involved here invade an area protected by the First Amendment?

5. If such questions did invade the First Amendment, did petitioner's refusal to answer them so clearly frustrate

an important and legitimate objective of the Committee as to warrant the invasion of petitioner's rights under the First Amendment?

6. Whether the entire proceeding resulting in petitioner's conviction is unconstitutional as a bill of attainder within the prohibition of Article I, Section 9, Clause 3 of the Constitution?

7. Whether the statute creating the Committee and defining its power is unconstitutional on its face or as applied in this case in that

(a) it exceeds the legislative power of Congress;

(b) it is too vague and indefinite;

(c) it abridges rights secured by the First Amendment;

(d) it violates the principle of separation of powers.

8. Whether the trial judge improperly excluded evidence in support of petitioner's contention that the Committee's purpose was to expose and injure him.

9. Whether in view of the vagueness of the Committee's authorizing statute, the Committee's announced purpose to expose him, and the other circumstances of the case, the pertinence of the questions which petitioner declined to answer to a matter under inquiry was "made to appear with undisputable clarity" within the meaning of *Watkins* v. *United States*, 354 U.S. 178, 214-215.

10. Whether an indictment under 2 U.S.C. 192 is insufficient because it fails to allege or specify:

(a) that the refusal to answer questions was deliberate or intentional; or

(b) the nature of the question under inquiry to which the *ad hoc* questions are alleged to be pertinent.

11. Is a defendant entitled to a dismissal of an indictment or a preliminary hearing thereon when he alleges by motion and affidavit that less than twelve jurors on the grand jury which indicted him were able to exercise an independent judgment because of the fear engendered by operation of the government employees security program, a fear which amounted to actual bias and prejudice against him?

Constitutional and Statutory Provisions Involved

The First Amendment to the Constitution of the United States provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fifth Amendment to the Constitution of the United States provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property,

without due process of law, nor shall private property be taken for public use, without just compensation."

2 U.S.C. Sec. 192, R.S. 102 (52 Stat. 942), as amended, provides:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee, established by a joint or concurrent resolution of the two Houses of Congress, wilfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 812, 823, 828) provides in relevant part:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"Rule XI

"Power & Duties of Committees

"(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively: . . .

• • • • •

"(q) (1) Committee on Un-American Activities.

"(A) Un-American Activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittees, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Rule 7 (c) F.R. Crim. Proc. provides in pertinent part as follows:

"The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count."

Statement of the Case

A. The Proceedings Before the Committee

On November 19, 1954, Representative Francis E. Walter announced what the aims of the House Committee on Un-American Activities (hereinafter referred to as the Committee), would be when he assumed its chairmanship in January of the next year (R. 193-194, 214; Pet. Exhs. *id.* 9 and 9-A, *Washington Daily News,* November 19, 1954):

"Rep. Francis E. Walter (D., Pa.) who will take charge in the new Congress of House activities against Com-

munists and their sympathizers, has a new plan for driving Reds out of important industries. He said today he plans to hold large public hearings in industrial communities where subversives are known to be operating, and to give known or suspected commies a chance in a full glare of publicity to deny or affirm their connection with a revolutionary conspiracy—or to take shelter behind constitutional amendments.

"'By this means,' he said, 'active communists will be exposed before their neighbors and fellow workers, and I have every confidence that the loyal Americans who work with them will do the rest of the job.'"

* * * * *

"Hearings of a similar nature have been held in local areas, but Rep. Walter wants to make them bigger, with the public being urged as well as invited to attend.

"'We will force these people we know to be Communists to appear by the power of subpoena,' Rep. Walter said, 'and will demonstrate to their fellow workers that they are part of a foreign conspiracy.'"

The very first Committee hearing in the year 1955[7] under this announced program was scheduled to be held in Fort Wayne, Indiana, on February 21 (R. 22, 89). On February 9, a Fort Wayne newspaper printed a story quoting a statement made by the Chairman that petitioner would be called to testify before the Committee at Fort Wayne, Indiana (R. 136, 85). Petitioner, then an officer of the United Elec-

[7] See *Supplement to Cumulative Index to Publications of the Committee on Un-American Activities, 1955-1956, 84th Cong., p. 1; Congressional Investigations of Communism and Subversive Activities,* Summary-Index, 1918-1956, compiled by Senate Committee on Government Operations, 84th Cong., 2d Sess., p. 252.

trical, Radio and Machine Workers of America (UE) (referred to hereinafter as the Union), was not served with a subpoena until February 15 (R. 22, 173), his subpoena having been issued on February 10 (R. 173).

Because the proceedings might affect the outcome of a National Labor Relations Board election among the employees of the Magnavox Company, scheduled for February 24, in Fort Wayne, many—including petitioner—protested on behalf of the Union (R. 169-171). Petitioner's protest also charged that, three days before the public announcement of the hearing, Mr. George McClaren, the labor relations director of the Magnavox Company, whose employees were involved in the election, announced to the employees that petitioner would be subpoenaed (R. 86-87; Hearings 79, 152).

On February 14, a representative of the Union sought a postponement of the proceedings because of the pendency of the election (R. 69-74). The Chairman called in the press while this application was being made and announced in the course of a recorded hearing that "all of us are interested in seeing your Union go out of business, because we do not feel it is good for the United States" (R. 77). Further remarks antagonistic to the Union were made by Congressman Walter and by Congressman Moulder, who was also present (R. 72-73).

On February 15, a Fort Wayne newspaper printed a boldly-headlined story (R. 199), "House Un-America (sic) Committee Wants UE Out of Business." The story, under the by-line of a reporter present at the hearing called by Chairman Walter (R. 68-84), states, "Chairman Francis Walter (D-Pa.) and Rep. Morgan Moulder (D-Mo.), both declared the committee should try to break the hold of the Union on defense plants" (R. 199). Thus, an application for adjournment made to protect the Union from the preju-

dicial impact of the Committee's planned hearing resulted in a further attack on it by the Committee.

On February 17, the hearing was adjourned until February 28 (R. 23-24). On February 22, Committee Chairman Walter again sought to attack the Union. In a statement in the Congressional Record he called for the defeat of the Union in the collective bargaining election and urged the Magnavox employees to vote against it (101 C.R. 1906, 84th Cong. 1st Sess.). He complained of the "telegrams and letters demanding that the hearings be cancelled" and claimed that they were subversively inspired.[3]

Since the adjourned hearing was transferred to Washington, a second subpoena was issued on February 23 (R. 63). And again before the issuance of the subpoena, a local newspaper was briefed on its intended issuance as well as the purpose of the hearing. The *St. Joseph Herald-Press*, a newspaper in St. Joseph, Michigan, where the Union functioned as the collective bargaining agent for the employees of the Whirlpool Company, on February 21 printed a statement of the Committee Chairman, stipulated at the trial to be accurate (R. 140, 148), that the hearing would expose petitioner and another subpoenaed witness as "card carrying Communists" and that, "the rest is up to the community" (R. 205). The story went on to point out that "the hearing will precede by three days the N.L.R.B. representative election at Whirlpool" (*id.*).

At the commencement of the hearing petitioner's counsel filed a motion, to which were appended the two newspaper clippings referred to above, objecting to the hearings on the following grounds (Hearings, 20; R. 201-203):

---

[3] Chairman Walter went on to explain that the "postponement was agreed to very reluctantly and only after it was feared that false and malicious charges against the committee by the UE might result in this communist-dominated union continuing as the bargaining agent in the vital defense plant."

"1. The committee is not engaged in a legislative investigation for a *bona fide* legislative purpose. This committee is limited under Article I, Section 1 of the United States Constitution to the exercise of legislative powers. The chairman of the committee has previously announced as is shown by the newspaper clippings attached hereto that the purpose of the hearing is to force the United Electrical, Radio and Machine Workers of America (UE) 'out of business' and that with respect to the movants Gojack and Jacobs 'to bring out the facts that they are card carrying Communists. The rest is up to the community.'

This purpose is not legislative in character and hence is outside the committee's powers.

"2. If the committee seeks to inquire into activities of a criminal nature, no specific charges have been furnished the movants and no evidence has been offered that they have violated any law.

In any event, the power to inquire into crime is one which is confided exclusively to courts and grand juries under Article I, Section 3 of the Constitution.

"3. The purpose of breaking a union is not one which is authorized by the committee's basic resolution, Public Law 601.

"4. Even if such a purpose were authorized by the committee's basic resolution, the resolution as so construed and applied would constitute a violation of the free speech and assembly guarantees of the First Amendment to the Constitution.

"5. The committee's basic resolution is in any event unconstitutional because no person can determine from it the boundaries of the committee's power.

"6. The committee intends, as its chairman has announced, to exact compulsory disclosures of movants' political beliefs and affiliations. The First Amendment forbids this particularly where as here there is no overriding legislative justification for such inquiry."

The motion, filed on behalf of the first three Union witnesses, was received by the Committee with the comment (Hearings 20) that "whatever action the Committee desires to take on it, we will take." After petitioner had declined to answer all of the questions which gave rise to the indictment, the Sub-committee Chairman announced (Hearings 155) that at the time the motion had been filed, "the members of the Sub-committee unanimously voted to overrule the objections and the motion to vacate subpoenas. Therefore, I want the record to show that at that time, *nunc pro tunc*, the objections and the motion to vacate subpoenas are overruled."

Not only was the action on the motion belatedly communicated to petitioner, but no statement was made to petitioner when he filed his motion describing the matter under inquiry. At the commencement of the entire hearing, the Sub-committee Chairman announced that the hearing would consider testimony (Hearings, 19) "relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda." The record does not show that petitioner was present when the statement was made.[4]

Petitioner was subjected to an unusually comprehensive probe of his life—both public and private. He was asked

[4] The Government has pointed to the fact that petitioner objected to certain questions asked of the first witness (Hearings p. 72). But that is hardly proof that he heard Congressman Moulder's statement.

not only the conventional questions about his politics, but about his employment since 1935 (Hearings, 73-79), his draft status in World War II (Hearings, 81-83) and whether he had falsified a claim to a high school education (Hearings, 135-138).

Petitioner responded to most of the questions—about five hundred in number—but declined to answer the nine questions which gave rise to the indictment, both on First Amendment grounds and on the ground that the purpose of the hearing was an illegal one, exposure (Hearings 84, 86, 89, 102, 103, 104-105, 133, 149). In response to one question, the witness protested that (Hearings 134; R. 121), "I don't think the law under which this Committee operates was set up for exposure purposes. My understanding is that that is what the courts are for, to expose people." Congressman Scherer replied (R. 121), "Their job is to judge, not to expose. It is the job of this Committee to expose Communists. That is one of its primary duties, to expose Communists and the nature of the infiltration of the Communist conspiracy in every activity and agency of American life, which includes labor unions."

In answer to questions about whether he was a Communist, petitioner pointed to the fact that beginning in 1943 he had signed affidavits, pursuant to Section 9(h) of the Taft-Hartley Act, that he was neither a member of, nor affiliated with the Communist Party and that he neither believed in, was a member of, nor supported any organization dedicated to the overthrow of the United States Government by force or by any illegal or unconstitutional methods (Hearings 84, 88; R. 92-93).

B. The Proceedings Below

1. *The District Court*

Petitioner was indicted in December 1955 on a nine-count indictment under the contempt statute (R. 1-3). The six counts here in issue[3] rest on refusals to answer the following questions:

> 3. Are you now a member of the Communist Party?
>
> 4. You have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson?
>
> 6. Mr. Gojack, did Mr. Elmer Johnson or Mr. Aron ever appear and address a group of people when you were present?
>
> 7. May I ask the witness, do you know whether or not Russell Nixon is a member of the Communist Party?
>
> 8. Did you take part in the peace pilgrimage to Washington which was organized by one of the "front" organizations known as the American Peace Crusade?
>
> 9. What method was used to get you as an original sponsor [of the American Peace Crusade]?

Petitioner moved to dismiss the indictment on the ground, among others, that the indictment lacked allegations of wilfulness (R. 4-5). Petitioner's motion further sought dismissal of the indictment, or a preliminary hearing, on the ground that less than twelve jurors on the grand jury which indicted him were impartial and free from bias

---

[3] Counts 1, 2 and 5 are no longer in the case.

against him (R. 4-5). In support of the motion for a preliminary hearing, petitioner annexed an affidavit and an offer of proof that eleven members of the indicting grand jury were government employees; that two were unemployed and that wives and members of the immediate family of other grand jurors might have been employed by the Federal or District of Columbia Government. The affidavit in substance alleged that the operation of government employee security programs had engendered fears among those subject and potentially subject to such programs which resulted in actual bias and prejudice against petitioner (R. 6-7). The motion was denied (R. 14).

The case was tried before Judge (now Chief Judge) Pine from April 30, 1956 to May 3, 1956. *Watkins* v. *United States*, 233 F. 2d 681, was decided by the Court of Appeals on April 23, 1956. It was heavily relied on both by the government and the court (R. 192-193; Tr. 380, 403). Frank Tavenner, the Committee's counsel and the Government's sole witness, testified that in 1951 the Committee had heard testimony that the entire Union was saturated with Communists (R. 28-29). He also testified that in July 1953, another witness offered the information that a group of Union organizers (in a District other than petitioner's) were Communists (R. 29-30). No testimony was adduced that the Committee had information that petitioner was a "card carrying Communist," to use Chairman Walter's words, or any other kind of Communist.

Mr. Tavenner further testified (R. 31-34) that in 1947 Aron and Johnson (Indictment, Counts 4 and 6) had been identified as Communists before the Committee. But no testimony was adduced that the Committee had any basis for linking petitioner politically with these individuals. Similar testimony was presented that the individual (Russell Nixon) referred to in Count 7 had been identified as a

Communist (R. 97-107). The Government further showed that petitioner—together with other Vice-Presidents of the Union—received a letter from Nixon with an enclosure of a document calling for peace addressed to the Union, from the Metal Workers of Paris (R. 49-57). Finally, the Committee adduced evidence that the American Peace Crusade had, in 1951, been cited—by the Committee itself—as a "front organization" (R. 34-42) and that petitioner was one of its sponsors (R. 41-42).

Petitioner sought at the trial to introduce evidence to show that exposure was reflected in the Committee's activities through the years; that it was the characteristic way in which the Committee exercised its jurisdiction (R. 161-204; D.E. 9, 9A *id.*). Part of this evidence was admitted (R. 161-185), but a large portion was excluded (on the authority of the decision below in the *Watkins* case) and was included in the record as an offer of proof (R. 185-214, 360; D.E. 8, 9 *id.*).* The government objected, not on the basis of the best evidence rule or lack of authenticity, but solely on the ground the evidence was "immaterial and irrelevant under the *Watkins* decision" (R. 193).

Petitioner also introduced evidence that Labor Relations Director McClaren of the Magnavox Company had, during the period when the Union had been the collective bargaining agent for the Company's employees, obtained from the Committee material contained in petitioner's dossier while he was an official of the Union, and had circulated it among the employees (R. 156-160; 152-154; D.E. *id.* 5, 5A).

Petitioner attempted to elicit testimony that McClaren had in fact acquired advance information from the Committee that petitioner would be subpoenaed and had used

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* One item in D.E. 9 *id.* was the quotation which introduces this Statement (D.E. 9-A, R. 359-360).

it in the manner charged by petitioner (*supra*), but was barred on the Government's objection that the testimony was "immaterial and irrelevant" (R. 160).

The trial court ruled (Tr. 449-450) that "the committee was engaged in a valid legislative purpose. The fact that the inquiry resulted in exposure does not defeat the validity of the inquiry." It found petitioner guilty and sentenced him to nine months imprisonment and a fine of $2,000.

2. *The Court of Appeals*

The Court of Appeals in affirming the conviction ignored almost entirely the pattern of events which underscored the non-legislative purpose of the hearing. It gave no weight at all to the publicity about petitioner's subpoenas and the announced intention of the Committee's chairman to expose petitioner.

In ruling that the purpose of the hearing was adequately communicated to petitioner, the court below found this case indistinguishable from *Barenblatt* v. *United States*, 360 U.S. 109.

SUMMARY OF ARGUMENT

I

The hearing in this case resulted from a purpose to expose and injure petitioner.

A. We concede that the courts must be hospitable to Congressional inquiries, but it is equally true that the courts cannot tolerate usurpations of the law-enforcement function.

From *Kilbourn* v. *Thompson*, 103 U.S. 168, 191, until the Court's decision in *Barenblatt* v. *United States*, 360

U.S. 109, the Court has made it clear that there is no legislative power to investigate the private affairs of private individuals. Nor does the Congress or any of its Committees possess the power to investigate in order to punish a witness. This is a law-enforcement power confided exclusively to the courts.

B. The record in this case must be evaluated in the light of a pattern of exposure which has characterized the Committee's function from the beginning. The Committee's self-proclaimed purpose has been exposure. The "facts" are already known to the Committee and the investigative inertia is overcome not because of an investigative need for facts, but only because the names of new exposable victims have become known to the Committee. The Committee's exhaustiveness and its continuity demonstrate that it has transformed itself into a law enforcement tribunal.

The extraordinary stress on names explains the Committee's demand of witnesses that they inform on others—even when this demand means a sacrifice of the information which the witness possesses. The hearing is merely a forum in which the witness whose lack of cooperativeness is known in advance is exposed and punished. In order to enhance the punishment the Committee insists on public sessions, where it is easy to stimulate economic, social and political sanctions against the unfriendly witness, to deprive him of his constitutional rights and to alienate him from the protections of his society. This exposure purpose and the importance of inspiring reprisal movements among its supporters explains the Committee's extraordinary use of field hearings, its collaboration with the press and its lack of legislative output.

In addition to its investigations, the Committee also engages in other ancillary legislative activities such as a

listing of condemned organizations, indices, dossiers and propaganda. The harshness of this exposure system has given rise to the practice of "clearing" the repentant and the blacklisted—a wholly non-legislative function.

Thus, petitioner's exposure hearing was the product of a unique exposure tribunal, an autonomous power system whose entire functioning is unified and explained by its purely non-legislative motivations.

C. In a number of recent cases the petitioners have charged that they were the victims of exposure. However, the Court rejected their claims primarily because there was no affirmative proof of an improper motivation. Here, there was such proof.

This was the first hearing conducted pursuant to a new plan to engage in bigger and better exposure hearings with a view to stimulating community reprisals. The entire record shows how this plan was executed. Petitioner was subpoenaed twice—his first hearing was postponed. Special interviews were given to the local press in two different communities before the subpoenas were issued announcing that they would be issued. The Personnel Manager of a plant in which petitioner's union was faced with an election was able to announce three days before the issuance of the subpoena that a subpoena would be issued. Chairman Walter expressly told a local newspaper that the hearing would demonstrate that petitioner was a "card-carrying Communist" and that "the rest" would be "up to the community." Another newspaper was told that the Committee was interested in breaking petitioner's union, an objective which was reiterated by the Chairman on the floor of Congress.

The subcommittee which presided over petitioner's hearing was informed of the Chairman's announcements and

actions, but did not disavow them. The exposure system thus revealed in the entire record is emphasized by the fact that the Committee had no evidence to warrant the belief that the petitioner was a "card carrying Communist."

D. The Government claims that the Committee had a *bona fide* legislative purpose which was to investigate Communism—generally and in the labor movement. But surely, a more specific legislative objective is required to overcome the strong proof of an exposure motivation. The published record of the hearings indicates that it was merely an investigation of "Communist Activities In The Fort Wayne Area"; this hardly reflects the kind of substantive evil which a court could accept as a shaping and exclusive legislative purpose. Equally unimpressive is the claim advanced at the trial that the hearing had something to do with the Communist Control Act of 1954. Nothing was said about that Act at the hearing; it was merely an afterthought advanced because it had successfully shown the legislative purpose of the *Watkins* proceeding in the court below.

But this hearing succeeded the Communist Control Act by some six months. Investigations under that Act were confided to the Attorney General who filed a petition against the Union on December 20, 1955, which was ultimately dismissed.

The Committee's Annual Report, far from supporting the claim of a *bona fide* legislative purpose, further confirms its absence.

Contrary to the Government's contention, this is not a case which relies on private motivations of Committee members, but on authoritative statements of its Chairman. A presumption of investigative regularity is not irrebuttable, and where, as here, the facts are clear that an exposure objective was present, the presumption falls away.

The Committee, of course, does not proclaim its exposure purpose from the housetops, but what is striking here is that the entire series of actions and pronouncements by the Chairman form a coherent whole which places an unmistakable punitive stamp on the hearing.

It must be borne in mind that the purpose of an investigative hearing can be established in ways more informal than those which are prescribed when a statutory purpose is under scrutiny.

II

If we are correct in our contention that the hearing was called for purposes of exposure, then there can be little doubt that the mere summoning of petitioner was an attainder. It cannot be doubted that exposure is punishment in the attainder sense. It is a judgment handed down without judicial trial that the victim is guilty of subversion. He is punished by the publication of that fact so that a badge of infamy can be attached to him. The exposure system is nourished by the same climate as that in which attainders flourished. It reflects the extent to which popular clamor and hate have forced a breach in the forms of law.

III

The inquiry in this case violated the First Amendment because a purpose to injure was its objective. Petitioner's constitutional rights cannot be subordinated to such purpose.

Moreover, the Committee had no legislative need for the information sought from petitioner, and there was no probable cause to believe that the petitioner had in his possession information which would be helpful to the Committee. In a First Amendment case such an absence of probable cause is fatal to a contempt prosecution.

IV

The trial court erroneously excluded evidence of an interview which Representative Walter gave to the press before he became Chairman, in which he announced his new plan for improving on the past exposure techniques of the Committee. This evidence was excluded by the trial court on the authority of the *Watkins* case below. But this evidence fell outside of the sources of proof of a committee's purpose condemned in the *Watkins* case below, and was manifestly competent and relevant. Its accuracy and authenticity were conceded. Similarly objectionable was the trial court's exclusion of evidence to show that the Labor Relations Director of a plant where petitioner's union was facing a labor representation election knew about the intended issuance of the subpoena before it was served on petitioner.

V

This case requires reversal because petitioner was denied the protections of *Watkins* v. *United States*, 354 U.S. 178, 208-209 requiring an explanation to the witness of the matter under inquiry and the pertinency of specific questions when they are otherwise obscure. Petitioner had excellent ground for believing that the purpose of the Committee as announced by the Chairman was to expose him and to break his union. He had a right to assume that all of the questions asked of him would be pertinent only to these purposes and indeed filed objections with the Committee protesting these announced purposes. His objections thus did not reflect an awareness of a contemplated legitimate subject under inquiry and he had a right to assume that all of the questions would be pertinent to himself and to an attempt to injure him and his union rather than to any other subject.

We think that the motion which petitioner filed at the outset of the hearing "triggered" the Committee's respon-

sibility to set out clearly the claimed subject under inquiry. The Committee evidently thought so too, for it denied the motion at the end of the hearing "*nunc pro tunc.*" But this delayed action could hardly cure the failure of the Committee to conform, at the outset of the hearing or at the time of the refusals to answer, to the requirements of *Watkins.*

VI

The indictment was insufficient in failing to specify the matter under inquiry in which the questions put to petitioner are claimed to be pertinent. We recognize that formal and technical defects cannot invalidate an indictment, but the defect here was basic. The indictment was couched in the general terms of the statute. But these were in no way informative. As the indictment reads, the questions under inquiry might have been on any of the vast number of subjects over which the Committee has ranged through the years.

The indictment did not convey the information needed by the trial court to rule on pertinence and by the petitioner to prepare his defense. It is significant that many related indictments, including some handed down for contempt of the Committee, contain specifications comparable to that lacking here. There is surely no reason why the present indictment should not be held to a similar standard of sufficiency.

The indictment likewise is defective in its failure to allege that the petitioner acted wilfully. The Court ruled in *United States* v. *Quinn,* 349 U.S. 155, 165, that Section 192 requires "a deliberate intention of refusal to answer." Since this intent is an essential ingredient of the offense, it must be alleged in the indictment.

VII

Petitioner was deprived of his right to a fair and impartial grand jury because eleven of the 23 members of the grand jury which voted the indictment against petitioner were at that time employed by the Government. For the sake of brevity and for the convenience of the Court, petitioner relies on Argument I of the brief for petitioner in *Russell* v. *United States*, No. 8, and requests dismissal of the indictment.

ARGUMENT

I. The Committee's Hearing Was an Exercise of the Unconstitutional Power of Exposure.

It is our contention that the hearing which gave rise to the petitioner's contempt citation was called for reasons unrelated to the legislative process. In making this contention, we recognize that the investigative power is a broad one and is not confined to investigations in connection with a specific piece of legislation, proposed or enacted. A Congressional committee may investigate to determine whether a law needs amendment or is being properly enforced. Similarly, investigations may broadly probe the proper expenditure of public funds.

We do not contend that an otherwise proper exertion of the power to investigate is vitiated by the fact that harm to the witness incidentally results from such inquiry. Nor do we challenge the view that the courts must extend hospitality to asserted legislative justifications of the power to investigate. The doctrine of the separation of powers requires this. But this same doctrine also requires that the courts exercise the utmost vigilance in rejecting assertions of legislative power which are poorly disguised usurpations of the law-enforcement function. We submit that this re-

sponsibility is particularly great during such a period of social and political tension as the present when the pressure to injure and punish, to discriminate and harass outruns the established forms of law. The Court has been made familiar with the manner in which, in the area of race relations, punishment frequently masquerades as legislation.[7] A comparable resort to forms of legitimacy has, we submit, cloaked an abuse of the legislative power in the realm of subversion.

A. The Congressional Power of Investigation Must Be Confined to the Limits of the Legislative Process

The Constitution does not in express language give Congress the power to investigate. The power to investigate is an implied power. Thus, the power to investigate must be in aid of the law-making power—not something separate and distinct from it. Our Government is one of limited and unenumerated powers; the totality of the authority of Congress under Article I, Section 1, is but the authority to exercise the "legislative power granted herein."

The Court long ago said of the investigatory power (*Kilbourn* v. *Thompson*, 103 U.S. 168, 191) that, "It will scarcely be contended by the most ardent advocate of this power in that respect that it is unlimited." The exercise of the power must be confined to matters within the constitutional authority of Congress.[8] Like other implied powers, it "is a means to an end and not the end itself" and "rests simply upon the implication that the right has been given

[7] Cf. *N.A.A.C.P.* v. *Patty*, 159 F. Supp. 503, 526 (E.D. Va.), reversed on other grounds, *sub nom.*, *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167.

[8] *Barry* v. *United States ex rel. Cunningham*, 279 U.S. 597, 614; *Reed* v. *County Commissioners of Delaware County*, 277 U.S. 376, 388.

to do that which is essential to the execution of some other and substantive authority expressly conferred." *Marshall* v. *Gordon*, 243 U.S. 521, 541.

In 1927, in *McGrain* v. *Daugherty*, 273 U.S. 135, 173-174, the Court reiterated that the power to investigate is not a "general" one but must be exercised for a legislative purpose:

> "... the two houses of Congress, in their separate relations, possess not only such powers as are expressly granted to them by the Constitution, but such auxiliary powers as are necessary and appropriate to make the express powers effective; and ... neither House is invested with 'general' power to inquire into private affairs and compel disclosures, but only with such limited power of inquiry as is shown to exist when the rule of constitutional interpretation just stated is rightly applied."

In 1929, in *Sinclair* v. *United States*, 279 U.S. 263, 292, the Court repeated the central thesis of the *Kilbourn* case, *supra*, that the individual has "the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of their personal and private affairs," and cited with approval all of its historic rulings protecting personal and private rights. *Interstate Commerce Commission* v. *Brimson*, 154 U.S. 447, 478; *Harriman* v. *Interstate Commerce Commission*, 211 U.S. 407;* *United States*

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* It was concerning this case that Mr. Justice Holmes wrote to Harold J. Laski:

> "The claim of the Interstate Commerce Commission in I.C.C. v. Harriman, 211 U.S. 407, made my blood • • • boil and it made my heart sick to think that they excited no general revolt. The soft period of culture that I spoke of the other day tended to oblivion of the fighting significance of guarantees." *Holmes-Laski Letters*, the Correspondence of Mr. Justice Holmes and Harold J. Laski, 1916-1935, 21.

v. *Louisville & Nashville R. Co.*, 236 U.S. 318, 335; *Federal Trade Commission* v. *American Tobacco Co.*, 264 U.S. 298, 305, 306.

The limitation on the power of Congress to conduct investigations was again emphasized by the Court in *Quinn* v. *United States*, 349 U.S. 155, 160-161:

> "There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate. Without the power to investigate—including of course the authority to compel testimony, either through its own processes (citing Cf. *Anderson* v. *Dunn*, 6 Wheat. 204) or through judicial trial (citing *In re Chapman*, 166 U.S. 661)—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively (citing See *McGrain* v. *Daugherty*, 273 U.S. 135, 175).
>
> "But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose (Citing *Id.*, at 173-174; *Kilbourn* v. *Thompson*, 103 U.S. 168, 190). Nor does it extend to an area in which Congress is forbidden to legislate (citing Compare *United States* v. *Rumely*, 345 U.S. 41, 46). Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary (citing *Kilbourn* v. *Thompson*, 103 U.S. 168, 192-193). Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the

Fifth Amendment's privilege against self-incrimination which is in issue here."

In *Watkins* v. *United States*, 354 U.S. 178, 187, 200, the Court stated,

"There is no authority to expose the private affairs of individuals without justification in terms of the functions of the Congress . . . Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible . . . We have no doubt that there is no congressional power to expose for the sake of exposure."

In *Barenblatt* v. *United States*, 360 U.S. 109, 133, the Court repeated:

"Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive."

If, as Chairman Walter announced, the purpose of the hearing was to expose petitioner, to attach an invidious label to him so that the community would work its will on him, it requires no argument that the hearing and, at the very least, petitioner's appearance, resulted from an unconstitutional exercise of power.

B. The Committee's Exposure System

The hearing in this case is but an instance—an unusually revealing one—of a pattern of exposure, which has characterized the Committee's functioning from the beginning.

These are the principal ingredients of the Committee's exposure operation:[10]

1. The Committee openly proclaims that its special, unique function is exposure.

2. The "facts" which the Committee purports to seek are already known to it through countless "area" or subject matter investigations.

3. The Committee's hearings are set in motion not because of a *bona fide* investigative need but only because the names of new, potentially unfriendly, witnesses have become known to it. Without a supply of such names, the Committee would grind to a halt like a locomotive without steam. This hunt for names accounts for the Committee's curious exhaustiveness. *Everyone* suspected by the Committee must be exposed. In some instances, the exposure process has victimized the same individual three or four times. The regular, continuous and recurrent pattern of the Committee's operation is quite different from the discontinuous and *ad hoc* character of conventional legislative investigations. It is a clue to the Committee's true role—that of a law enforcement tribunal which judges and pun-

[10] This necessarily brief summary is based upon petitioners' briefs in the *Emspak*, *Watkins* and *Braden* cases and the *amicus curiae* brief of *Davis, et al.*, submitted in support of the petition for rehearing in *Barenblatt* v. *United States*, *supra*. Much of the material in these briefs is amplified and brought down to date in Donner, *The Un-Americans* (New York, 1961) and *The Congressional Pillory*, The Nation, February 28, 1961.

ishes for present and past (almost invariably these days, the latter) political affiliation of which it disapproves.

The imperatives of the exposure process thus explain the Committee's functional continuity. This continuity of the exposure system is vital to the achievement of the Committee's goals of intimidating dissent and perpetuating itself.

4. Because names are the Committee's life-blood, it inevitably forces the would-be co-operative witness to name others. Witnesses who plead with the Committee to waive the requirement so that they can be "cleared" as friendly are invariably refused even though they promise full disclosure of their own activities. The unwillingness to act as an informer thus forces the witness to refuse to co-operate altogether. This is no great loss to the Committee. The facts which the witness offers to share about his own activities are not important, but the names are vital to the exposure process.

5. More than eighty percent of the "testimony" before the Committee consists of the refusals of witnesses to testify and supporting explanations and pleas. The Committee knows (or can easily find out) whether or not a prospective witness will testify. But the Committee cherishes these witnesses; they are precisely the ones who must be exposed and punished. The compulsory disclosure of the witness' politics is not a means to a disclosure of other facts, but an end in itself. It is a destination, not a journey.

6. In order to ensure the maximum injury to the witness, the Committee invariably requires him to appear at a public session. The Committee uses the executive session primarily for the purpose of determining how best to injure the witness. The fact that the witness has already

testified *in camera* does not save him from a public appearance. The public session facilitates his exposure as well as the exposure of those whom he is required to name.

7. The public exposure hearing operates through a dual process of public identification of the victim and the stimulation of group and individual economic, social and political sanctions against him so that he will be discharged and permanently blacklisted, his career and reputation destroyed, his social and family relationships ruined and his children shunned. The Committee seeks to achieve its purposes by attributing to the witness views and affiliations—political, trade union, organizational—which it equates with such fear-engendering crimes as treason, plotting, espionage and sabotage. In order to guaranty results, the Committee collaborates with those in the community who share its views to inspire in the rest of the community sufficient hatred and fear of the victim to do its bidding. An exposed witness suffers an invasion of his constitutional rights; he is also alienated from the moral and ethical protections of his society.

8. The exposure process is implemented by private groups who collaborate with the Committee by executing its sentences. In furtherance of this collaboration the Committee elicits details about the witness's life, residence, occupation and place of work. Congress has no need for these facts, but they help the bigots in the community, in Chairman Walter's words, "do the rest." The need to ensure that the exposure will "take" also explains the Committee's partiality for on-the-spot hearings ("road shows"). Since 1950, the Committee has held hearings in more than 25 different American cities (and in some of them three or four times). It is for this reason also that the Committee leans so heavily on the press.

9. The Committee on occasion activates its exposure system at the instance of the private individuals and groups who collaborate with it in the exposure process. Employers, patrioteer and ultra-rightest groups can bring the Committee to their communities to expose their enemies.

10. Although the Committee is both a permanent investigating committee and a standing legislative committee, its performance in the latter capacity is significantly unimpressive. In the 16 years of its functioning in its combined capacity, it has rarely held legislative hearings on the bills which have been referred to it. The Committee's scorn for legislative hearings is explained only by the fact that investigative hearings are much more useful as tools in the exposure operation.

11. The investigative hearings themselves have little or no relationship to the legislative recommendations which the Committee makes in its annual reports. These recommendations are not the product of the investigative processes but are glued on, as it were, to its annual reports to give the appearance of legitimacy to its exposure hearings.

12. In order to make effective its exposure activities, the Committee engages in a variety of related, non-legislative operations:

(a) The Committee condemns organizations as subversive without hearings in order to discredit their activities and to supply its collaborators with the raw materials for judging, injuring and blacklisting Americans because of their membership in these organizations. The organizations which fall under its disfavor are collected in a compendium called, "Guide to Subversive Organizations and Publications," which lists

in alphabetical order the disfavored organizations and publications.

(b) The Committee publishes an ever-increasing stream of propaganda which has no relationship to the legislative process but which promotes the fear and hate, so essential to the operation of the exposure system.

(c) The Committee maintains an elaborate system of dossiers. These dossiers are made available to the Committee's supporters, either directly or through their Congressmen, for the purpose of enabling the Committee's supporters or collaborators to maintain surveillance over political suspects and to do them injury with officially sanctioned weapons. The dossiers are supplemented by huge published indices of names.

13. The exposure system not only has its "law side" but it also has its "equity side." The Committee uses its power officially to "clear" witnesses who find themselves unemployable either because they have previously been exposed or are condemned by the Committee's supporters.

14. In developing this exposure operation, the Committee has, in fact, converted itself into a fourth branch of Government, an autonomous, institutionalized power system which is disguised by a pervasive deception. In pre-*Watkins* proceedings (such as this case), the Committee was not overly cautious about concealing its exposure aims. It was only when the case came to court on enforcement of a contempt citation that the Committee invented a legislative justification. Since *Watkins*, the Committee has perfected an elaborate series of justifications on the hearing level: a "canned" ritualistic recital of legislative purpose, a "box-score" of legislative recommendations and an "Omni-

bus" anti-subversive bill on which it cannot act because it lacks jurisdiction.

We submit that this pattern of exposure and deception as mirrored in the Committee's hearings and reports for more than a generation is important in evaluating the Committee's purpose here. The Committee is marked by a unique institutional homogeneity and continuity. It has exercised its power in the same fashion throughout its history. In 1949 it informed Congress that (R. 179) "its work is part of an 11-year continuity of effort that began with the establishment of a Special Committee on Un-American Activities in August 1938. The Committee would also like to recall that at no time in those eleven years has it ever wavered from a relentless pursuit and exposure of the Communist Fifth column."

In 1951 it repeated (R. 182), "the House Committee on Un-American Activities was started on its way May 20, 1938, with instructions from the United States House of Representatives to expose people and organizations attempting to destroy this country. That is still its job, and to that job it sticks."

In 1954, chairman-to-be Francis E. Walter announced (*supra*) the Committee's "new plan for driving Reds out of important industries" by holding bigger and better exposure hearings. The novelty of the plan was that the "public [was to be] urged as well as invited to attend" so that the "full glare of publicity" would enable "loyal Americans" to "do the rest of the job." [11]

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[11] Mr. Walter could hardly have thought that this "new plan" had a legislative significance. On August 26, 1955, he observed, "Unlike most congressional committees, in addition to the legislative function we are required to make the American people aware if possible of the extent of the infiltration of Communism in all phases of our society." U.S. News and World Report, August 26, 1955, p. 71, quoted in Judge Edgerton's dissenting opinion in

The Committee's activities through the years cannot be viewed as a disconnected series of hearings, publications, indices, press releases, each unrelated to the other. The entire life of the Committee is institutionally unified and explained by its dominant exposure purpose and techniques, refined and rationalized with the passage of time. Under these circumstances, the Court cannot blind itself to the Committee's past activities. And this is especially so because this exposure pattern finds extraordinary confirmation in the record here.[12]

C. Petitioner Was Called for the Express Purpose of Exposing Him

Within recent years, the Court has decided five cases in which an improper Committee purpose or objective was asserted as a defense to a contempt citation and punishment. *Quinn* v. *United States, supra; Watkins* v. *United States, supra; Barenblatt* v. *United States, supra; Wilkinson* v. *United States,* 365 U.S. 399; *Braden* v. *United States,* 365 U.S. 431. In all of these cases the argument of improper purpose was based primarily on inferences drawn from a claimed lack of a legitimate legislative purpose. In those cases in which the Court rejected the claim of lack of legislative purpose (*Barenblatt, Braden* and *Wilkinson*) it automatically disposed of the exposure contention. The basic

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Watkins v. *United States,* 233 F.2d, 681, 693 (App. D.C.). The Committee *knows* that its exposure objectives cannot be validly achieved through legislation (R. 190-191; *Barsky* v. *United States,* 167 F.2d 241, 256 (App. D.C., dissenting opinion). For the Committee's most recent pronouncement on the exposure problem, see its *Annual Report* for 1960, p. 137.

[12] As the dissenting opinion pointed out in *Watkins, supra* (at p. 692), "Words and conduct of the Committee on other occasions go far to confirm the inference that its purpose on this occasion was exposure . . . Although general propositions do not decide concrete cases, they help to decide them."

lapse in the proof was, we think, that there was no showing that the Committee had affirmatively "assumed a power which could only be properly exercised by another branch of government, because it was in its nature clearly judicial." *Kilbourn* v. *Thompson*, 103 U.S. 168, 192 (quoted in *Barenblatt* v. *United States*, *supra*, at p. 133).

In this case, the Committee through its Chairman, undertook to judge petitioner as a person and to spur the community to punish him. The exposure purpose was explicit and unequivocal. It is based not on inference but on fact.

The following circumstances, we submit, establish beyond question the exposure purposes of the hearings:

(a) This was the first hearing conducted pursuant to a statement of policy made to the press (*supra*) that the Committee would operate under a "new plan" under which known or suspected subversives would be given "a chance in the full glare of publicity" to deny charges against them or "to take shelter behind constitutional amendments," so that they could be "exposed before their neighbors and fellow workers" with a view to insuring that "loyal Americans who work with them will do the rest of the job." The purpose of these hearings, Representative Walters explained, would be "to demonstrate that [the witnesses] are part of a foreign conspiracy" (*supra*, pp. 6, 7).

(b) On two separate occasions, even before the subpoena to testify was issued, special interviews were given to the local press in two different communities where the witness's Union was facing representation elections, announcing that the subpoenas would be issued (*supra*, pp. 7-9).

(c) The personnel manager of one plant in which a union representation election was scheduled announced

three days before the subpoena was actually issued that petitioner would be subpoenaed—the same personnel manager who on an earlier occasion had obtained access to petitioner's dossier from the Committee's private files. (*supra*, p. 8).

(d) In one interview given to the local press before the issuance of the subpoena, Chairman Walter stated that the Committee intended to show that the petitioner and another witness connected with the Union were "card carrying Communists" and that "the rest is up to the community" (*supra*, p. 9).

(d)(e) Another newspaper was told, through its Washington correspondent, that the Committee was interested in breaking the union of which the witness was a leader because its continued existence was not good for the country. The substance of this objective was repeated by the Chairman on the floor of Congress. (*supra*, p. 8).

(f) When the Chairman's exposure campaign was complained of at the hearing by motion, the sub-committee made no effort to deny the facts or disavow that its objective was exposure (*supra*, p. 9).

(g) The Committee had no probable cause to believe that petitioner would supply it with information. Despite Chairman Walter's announced intention to demonstrate that the witness was a "card carrying Communist," no evidence was adduced at the hearing or the trial to this effect. Mr. Tavenner's testimony at the trial shows only that the Committee called the witness because he was an officer of the Union, but no testimony was offered that the Committee had evidence that he had been accused of Communism (*supra*, pp. 14, 15).

If, as the Court ruled in *Barenblatt* (360 U.S. at 112), the "power [of investigation] and the right of resistance to it are to be judged in the concrete and not on the basis of abstractions," the conviction here must be reversed.

D. The Government's Contentions

1. *The Claimed Bona Fide Legislative Purpose.*

The Government urges that a *bona fide* legislative purpose prompted the hearings and that the evidence we have recited of an invalid purpose merely shows "motive."

The entire record is consistent with the contention that the inquiry was conducted for a non-legislative purpose. At the commencement of the hearing at which petitioner testified, the sub-committee chairman stated (R. 60):

> "There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of Communist Party propaganda.
>
> • • •
>
> "In the course of the investigation conducted by this committee at Dayton in September, 1954, information was obtained indicating that one or more of the witnesses to be heard today should have firsthand knowledge of Communist Party activities in the area of Dayton and elsewhere."

The Dayton hearings, a run-of-the-mine exposure proceeding entitled, "Investigation of Communist Activities in the Dayton, Ohio area," was held in Dayton on September 13-15, 1954, and were presided over by Ohio's Representa-

tive Scherer.[13] The hearings explored a melange of subjects ranging from labor to education and dredged up hundreds of names for the Committee's exposure mill. But the Committee's haul did not include petitioner.

The sole reference to petitioner in the proceedings appears in the following colloquy (Dayton Hearings, Part 2, p. 6900):

> "Mr. Clardy [of Michigan]. Do you know a man by the name of Gojack? Do you know him?
>
> "Mr. DeLacy. Yes.
>
> "Mr. Clardy. You know he is at the moment participating in the Square D strike in Detroit?
>
> "Mr. DeLacy. I understand the whole UAW has joined in the picket line.
>
> "Mr. Clardy. I am asking you a very simple question.
>
> "Mr. DeLacy. I don't know where he is.
>
> "Mr. Clardy. You haven't been in contact with him?
>
> "Mr. DeLacy. Not recently.
>
> "Mr. Clardy. Have you any idea whether Mr. Gojack is a member of the Communist Party?
>
> "Mr. DeLacy. None whatsoever."

The Committee in the Dayton hearings thus had not obtained information that petitioner had "firsthand knowledge of Communist Party activities." Petitioner's hearing was a dragnet inquiry into Communism. We submit that such an "investigation" was merely a manhunt. The legislative purpose reduces itself to an unparticularized probe of communism generally and in the labor movement. Such a vague theme, divorced from a claimed concern with a

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[13] A fourth final session was held in Washington, D. C. in November, 1954. See *Russell* v. *United States*, No. 8, this Term.

specific substantive evil, cannot serve to validate an inquiry whose only other announced purpose is exposure. The published report of the hearings (GE 7) which bears the official title "Investigation of Communist Activities in the Fort Wayne, Ind., Area," likewise supplies no indication of a legislative purpose to which, it might be claimed, the exposure objective was merely ancillary.

At the trial the prosecution did not offer even an hypothesis to link the inquiry or the *ad hoc* questions to a legislative purpose. It seems fair to say that the basic theory relied upon by the government is that an inquiry into Communism is self-justifying and that a committee of Congress needs no legislative justification for exposing suspected Communist individuals or organizations (R. 25-37, 40-50).

The prosecution further urged at the trial that the Communist Control Act of 1954 which had been relied on to support the legislative purpose of the *Watkins* proceeding, also supplied a legislative purpose to this proceeding (R. 18-19).

But this is plainly an afterthought. The Committee never told petitioner that it was concerned with this statute when he challenged the purpose of the hearing. Besides, the *Watkins* hearings antedate the August 1954 passage of the Communist Control Act, while these hearings followed the passage of the Act.

A vague speculation that the Committee could have concerned itself with exploring the enforcement of or possible amendments to the Communist Control Act does not, we submit, neutralize the solid evidence of the purpose to expose.

By the terms of the Communist Control Act of 1954, Congress delegated to the Attorney General the task of investigating unions and of proceeding before the Subversive Activities Control Board against those alleged to

be dominated or infiltrated by Communists.[14] If the Union's leadership made it a threat to security, the investigative resources of the Attorney General were available to

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[14] The portion of the Communist Control Act referred to in the text has been added to the Internal Security Act of 1950, 50 U.S.C. 781 ff., as amended, as Section 134. It reads in relevant part as follows:

"(a) Whenever the Attorney General has reason to believe that any organization is a Communist-infiltrated organization, he may file with the Board and serve upon such organization a petition for a determination that such organization is a Communist-infiltrated organization. In any proceeding so instituted, two or more affiliated organizations may be named as joint respondents. Whenever any such petition is accompanied by a certificate of the Attorney General to the effect that the proceeding so instituted is one of exceptional public importance, such proceeding shall be set for hearing at the earliest possible time and all proceedings therein before the Board or any court shall be expedited to the greatest practicable extent.

"(b) Any organization which has been determined under this section to be a Communist-infiltrated organization may, within six months after such determination, file with the Board and serve upon the Attorney General a petition for a determination that such organization no longer is a Communist-infiltrated organization.

"(c) Each such petition shall be verified under oath, and shall contain a statement of the facts relied upon in support thereof. Upon the filing of any such petition, the Board shall serve upon each party to such proceeding a notice specifying the time and place for hearing upon such petition. No such hearing shall be conducted within twenty days after the service of such notice.

"(d) The provisions of subsections (c) and (d) of section 13 shall apply to hearings conducted under this section, except that upon the failure of any organization named as a party in any petition filed by or duly served upon it pursuant to this section to appear at any hearing upon such petition, the Board may conduct such hearing in the absence of such organization and may enter such order under this section as the Board shall determine to be warranted by evidence presented at such hearing.

"(e) In determining whether any organization is a Communist-infiltrated organization, the Board shall consider—

(1) to what extent, if any, the effective management of the affairs of such organization is conducted by one or more

bring it to book.[14] The Committee needed the information not to guide Congress in the discharge of its legislative re-

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individuals who are, or within two years have been (A) members, agents, or representatives of any Communist organization, and Communist foreign government, or the world Communist movement referred to in section 2 of this title, with knowledge of the nature and purpose thereof;

(2) to what extent, if any, the policies of such organization are, or within three years have been, formulated and carried out pursuant to the direction or advice of any member, agent, or representative of any such organization, government, or movement;

(3) to what extent, if any, the personnel and resources of such organization are, or within three years have been used to further or provide the objectives of any such Communist organization, government, or movement;

(4) to what extent, if any, such organization within three years has received from or furnished to or for the use of, any such Communist organization, government, or movement any funds or other material assistance;

(5) to what extent, if any, such organization is, or within three years has been, affiliated in any way with any such Communist organization, government or movement;

(6) to what extent, if any, the affiliation of such organization, or of any individual or individuals who are members thereof or who manage its affairs, with any such Communist organization, government, or movement is concealed from or is not disclosed to the membership of such organization; and

(7) to what extent, if any, such organization or any of its members or manager are, or within three years have been, knowingly engaged—

(A) in any conduct punishable under section 4 or 15 of this Act or under chapter 37, 105, or 115 of title 18 of the United States Code; or

(B) with intent to impair the military strength of the United States or its industrial capacity to furnish logistical or other support required by its armed forces, in any activity resulting in or contributing to any such impairment."

[14] Indeed, a petition was filed against the Union under the statute on December 20, 1955. After a lengthy hearing the Department of Justice moved to dismiss because it was unable to establish the

sponsibilities, but only to enable it more effectively to accomplish its punitive purpose.

It is hardly surprising that the Committee made no recommendations in the area of its claimed legislative concern. It recommended instead legislation concerning wiretapping, requirement of affidavits from Government contractors, revision in the statute of limitations on treason, espionage and title 18, section 1001 violations, and, finally, a streamlined procedure for punishment for contempt of Congress (R. 134-135). Obviously, none of the information sought from petitioner in the hearing had any bearing whatever on any of these legislative proposals.

In summing up its work for the past year in its Annual Report, the Committee stated (R. 129-130):

> "Documented proof that a Communist-dominated union siphons off workers' dues for Communist purposes was produced in the course of committee investigations and hearings on District 9 of the United Electrical, Radio and Machine Workers of America. UE District 9 supervises union locals in Indiana and Michigan from headquarters in Fort Wayne, Ind. These hearings were printed under the title, 'Fort Wayne, Ind., Area.'"

It should be noted, first, that the Communist Control Act adequately dealt with this problem. But of even greater significance is the fact that in its questioning of petitioner, who was called to testify precisely because he was an officer of District 9, no questions were asked concerning the use of union dues for Communist purposes.

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allegations of the petition and the Subversive Activities Control Board dismissed the petition on March 30, 1959. See *Rogers* v. *United Electrical, Radio and Machine Workers of America*, Docket No. 119-56, Subversive Activities Control Board.

The Annual Report goes on to state (R. 130):

"In the course of the past year, this committee prepared and printed a cumulative index to all hearings and reports of the committee from its inception in 1938 through 1954. Whereas earlier cumulative indexes issued by the committee were confined to the names of individuals, the new index for the first time contains not only individuals but also organizations and publications mentioned in hearings and reports from 1938 through 1954.

"This mammoth project was undertaken in the belief that it would be of inestimable assistance to the work of the committee's staff, the Congress, and the various Federal, State, and municipal agencies concerned with the problem of the Communist conspiracy. The reception which the new index has already received completely justifies the undertaking. The committee would like to call attention to the warning, clearly carried in the index, that the mere listing of any person, publication, or organization in the index constitutes no evidence of derogatory information in committee hearings and reports. Anti-Communists as well as Communist individuals and organizations are frequently mentioned in committee publications and both have been listed in accordance with customary indexing procedures.

"Members of Congress have continued to call upon the committee for information on subversive activities. The reference section answered more than 1,300 requests submitted by individual members of Congress during the past year, in addition to its services for the committee staff and various agencies of the executive branch of the Government. To supply these services, the committee maintains comprehensive information

files dating back many years and constantly growing in volume and value."

Indeed, the record fully documents the manner in which the Committee files concerning petitioner were placed at the disposal of employers for anti-labor purposes (R. 151-154, 157-160). But this is hardly a *legislative* purpose. The achievements in which the Committee takes pride in its annual reports may well reflect the effectiveness with which it executes its self-assigned function of exposure, but, by the same token, they confirm the fact that the Committee itself construes its basic resolution to authorize exposure as an activity independent of legislative investigation.

The fact that the Committee conceivably had a *bona fide* purpose can not save petitioner's conviction if an accompanying and co-equal purpose was exposure. All of the questions which he refused to answer are directly related to the purpose to expose. The fact that they could have been asked in pursuance of a valid purpose hardly establishes that they were. The Court cannot now speculate as to whether they would have been asked in the course of a legitimate hearing.

Moreover, when the Committee undertook to expose petitioner, it was acting wholly outside of its competence. The entire inquiry was tainted. As Judge Keech pointed out in *United States* v. *Icardi*, 140 F. Supp. 383, 388—a case which bears a close resemblance to this one—"If the committee is not pursuing a *bona fide* legislative purpose when it secures the testimony of any witness, it is not acting as a 'competent tribunal' even though that very testimony is relevant to a matter that could be the subject of a valid legislative investigation."

2. *The Contention Concerning Motive.*

In its Opposition (p. 10) the Government argues that "even if it be assumed, contrary to this record, that exposure for its own sake was a private motive of certain individual members of the Committee, their 'motives alone would not vitiate an investigation' if a legislative purpose of the House of Representatives 'is being served.' *Watkins* v. *United States*, *supra*, 354 U.S. at 200. And see *Barenblatt* v. *United States*, *supra*, 360 U.S. at 132."

But, we do not argue here that the personal motives of one or more Committee members, or their animosity toward petitioner, vitiated the inquiry. Our contention is that the objective of the hearing itself was to do him injury. This distinction can be illuminated by the by-play in the record about petitioner's role in the Square D strike (Hearings, p. 105; *supra*, p. 38). If we had contended that Congressman Clardy of Michigan had persuaded the Committee, before he left the Congress in 1954, to use its powers against petitioner because he had participated in the Square D strike, that fact, even if true, would not invalidate an otherwise valid inquiry. But the evidence here is that the publicly expressed reason for calling petitioner was exposure. We are simply not dealing "with a private motive of certain individual members of the Committee."

As we read the *Watkins* and *Barenblatt* cases, they ruled in effect that proof of an improper exposure purpose is a question of fact. Such proof is inadequate to overcome the presumption of investigative regularity when it is confined to an inference based upon private or personal motivations. But when the facts are clear that an exposure objective was present, the presumption falls away.

Here, the exposure purpose was stated and publicly emphasized by the *Chairman* of the Committee and never

disavowed by members of the sub-committee when it was brought to their notice by petitioner's motion. It must be recognized that there is a clear difference between the modes of establishing statutory purpose and intent and investigative intent. The technical stages in the passage of legislation—Committee reports, floor speeches, committee conferences and the like—are formal well-established steps in the legislative process which a court retraces in determining legislative intent. But the purpose of an investigation, the reasons why it was called into being, must frequently be ascertained through more "informal" sources since the investigations are activated in highly informal ways. A subpoena, a letter, a telephone call can overcome the investigative inertia and initiate an investigation.

Surely no more authoritative source of the purpose of a hearing can be found than the Chairman's publicly announced statement of its purpose. The Chairman is the recognized spokesman of the Congressional committee. Under the Committee Rules, for example, he alone has responsibility for issuing subpoenas and launching preliminary inquiries (GE 4; R. 150). The sub-committee which conducted the hearing was appointed by the Chairman (R. 60). Chairman Walter regards himself as this Committee's responsible spokesman. See, for example, Petition for Certiorari (p. 12) and record (pp. 145-154) in *Yellin* v. *United States*, No. 154, Misc. this Term, certiorari granted, October 9, 1961. Nor may the Chairman's publicly expressed intent be discounted as incidental or peripheral. Everything that Mr. Walter said or did, the entire series of pronouncements and actions, forms a unified and coherent whole which stamps its impress on the hearing.

The Chairman of the Committee, exclusively entrusted with the power to issue subpoenas, notifies the local press—not once but twice—that a subpoena will issue; he calls a

hearing on the Union's request for an adjournment further to make clear his desire to break the Union. He tells a local newspaper—the quotation is directly attributed to him and its accuracy is undisputed—that "We intend to bring out the facts that they are card carrying Communists. The rest is up to the community."

If the Court's strictures against investigative exposure for exposure's sake are not to be reduced to an empty verbalism, then the ruling below that this was not an exposure hearing cannot stand. The Court cannot thus lightly permit circumvention of the Constitution.[16] If petitioner's showing in this case falls short of what is required, then we doubt whether an exposure purpose can be shown in any case, or indeed whether the purpose of the Committee can be viewed as a question of fact at all.

II. The Hearing Was a Proceeding to Attaint Petitioner.

If we are correct in our contention that the hearing to which petitioner was called was based upon a purpose to expose him, then there can be little doubt that the entire proceeding gave rise to a bill of attainder. *United States* v. *Lovett*, 328 U.S. 48.

Quite apart from the purpose to turn the petitioner over to the community for reprisal, the exposure of an individual is a "burden" in the bill of attainder sense.[17] In its essence it is a judgment handed down without judicial trial that the witness is guilty of subversion. The punishment is the publication of that fact so that a badge of infamy may be attached to the victim.

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[16] Compare *Gomillion* v. *Lightfoot*, 364 U.S. 339.

[17] See *Ex parte Garland*, 4 Wall. 333; *Cummings* v. *Missouri*, 4 Wall. 277; Note, *Punishment: Its Meaning in Relation to Separation of Powers and Substantive Constitutional Restrictions* And Its Use In the *Lovett*, *Trop*, *Perez* and *Speiser* Cases, 34 Indiana Law J. 231, 234-249.

As Irving Brant has written of investigative exposure:

> "... By smiting a man day after day with slanderous words, by taking away his opportunity to earn a living, you can drain the blood from his veins without even scratching his skin.
>
> "Today's bill of attainder is broader than the classic form, and not so tall and sharp. There is mental in place of physical torture, and confiscation of tomorrow's bread and butter instead of yesterday's land and gold." [18]

The Court is familiar with the history of attainders[19] and no purpose would be served here in retracing it. What does require emphasis is the extraordinary similarity between the contemporary social and political climate against minorities and the seventeenth century religious and political climate of passion and fear in which attainders flourished. The climate of that time created pressures to punish unpopular minorities without resort to the established forms of law. Attainder was used to strike at its victims because no other legal way could be found to do so. The number of suspects were too great, the evidence inadequate, the legally-prescribed punishment not severe enough. Attainder was an instrument of a legislature in the grip of hate and prejudice, impatient with the forms of law.[20]

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[18] Quoted in Mr. Justice Douglas' dissent in *Flemming* v. *Nestor*, 363 U.S. 603, 629.

[19] See, for example, Mr. Justice Black's concurring opinion in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 142.

[20] The Earl of Strafford was attainted of high treason "to Husband time" and to "obviate those Scruples and Delays, which through disuse of proceedings of this nature, might have risen in the manner and way of proceedings." Rushworth, *Strafford's Trial*, pp. 676-677.

As Mr. Brant has written (op. cit., *supra*):

> "What is perfectly clear is that hate, fear and prejudice play the same role today, in the destruction of human rights in America that they did in England when a frenzied mob of lords, judges, bishops and shoemakers turned the Titus Oakes blacklist into a hangman's record. Hate, jealousy and spite continue to fill the legislative attainder lists just as they did in the Irish Parliament of ex-King James."

We submit that exposure, too, is a grave and frightening reflection of the breakdown in legal protections which results when the legislature—or its agencies—puts itself at the service of hysteria. Popular clamor against the "subversive" inspired the exposure process. Its persistence and growth during the past generation threatens to perpetuate and freeze it into a permanent institution which cannot be squared with our Constitution.

In *Flemming* v. *Nestor*, *supra*, at p. 48, the Court observed that in the *Test Oath* cases, "the finding of punitive intent drew heavily on the Court's first-hand acquaintance with the events and mood of the then recent Civil War, and 'the fierce passions which that struggle aroused.'" In our own time, too, fierce passions of which this Court undeniably has first-hand knowledge have driven the legislature into the realm of attainder, to "reach the person, not the calling."

III. The Inquiry Violated the First Amendment.

Since, as we have seen, petitioner was not called for a legislative purpose, the compulsory disclosure of his political views and affiliations cannot be balanced against the need to preserve our security. Injury, not security was the purpose of the interrogation and manifestly such an objective constitutes no legitimate public interest to which petitioner's rights must be subordinated.

Quite apart from the impact of the exposure purpose on the First Amendment issue, the questions improperly invaded petitioner's First Amendment rights.

We think that a Congressional committee must limit the exercise of its investigative power to its needs when it invades the First Amendment area. The Committee already had detailed information in its files about petitioner (*supra*, p. 15) and petitioner, for the five years prior to the date of his appearance had filed non-Communist affidavits pursuant to the Taft-Hartley Act (R. 67, 92-93). See *American Communications Association* v. *Douds*, 339 U.S. 382.

Nor did the Committee have reason to believe that the affidavits were false. This lack of "probable cause" further confirms the exposure purpose of the hearing and eliminates a prerequisite to a permitted invasion of petitioner's rights under the First Amendment. The Court has ruled that when rights under the First Amendment are threatened, the appearance of a witness before a Congressional committee may not be required pursuant to "indiscriminate dragnet procedures, lacking probable cause for belief that he possessed information that might be helpful" to the Committee. *Barenblatt* v. *United States*, *supra*, 360 U.S. at 134. But this proceeding did result from a dragnet

operation through which the entire leadership of the Union was to be systematically subpoenaed (*supra*, p. 14). Moreover, the Committee had no information linking petitioner with the Communist Party (*supra*, p. 14). The Committee did have information linking petitioner with the American Peace Crusade some four years prior to his interrogation (R. 41). But, we submit, no contention can be made that this organization threatens our security. No justification can therefore be found for subordinating petitioner's rights of freedom of association.

As the Court pointed out in *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 462:

> "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized *the vital relationship between freedom to associate and privacy in one's associations.* When referring to the varied forms of governmental action which might interfere with freedom of assembly, it said in *American Communications Assn.* v. *Douds*, *supra*, [339 U.S. 382] at 402: 'A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature.' Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. *Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.*" (Emphasis added.)

Finally, even if a legitimate legislative purpose should be deemed to have been present in this case, the Court, we respectfully submit, must re-examine its ruling in *Barenblatt* v. *United States, supra*, which withholds First Amendment protections from compulsory disclosure of present or former Communist Party membership. The Court has seemingly committed itself to the view that our country is under a permanent threat of internal subversion of such menacing proportions as to require the curtailment of our freedoms for the indefinite future. This disturbing conclusion threatens a crisis in our democratic freedoms.

Nor can it be said that the compulsory disclosure device here in issue is an insignificant or minor rupture in the fabric of our freedoms. The matrix of our entire system for protesting dissent is embedded in the anonymity which an impersonal urbanized culture has made possible. The individual's right to dissent was but an abstraction in a pre-industrialized culture when each man was at the mercy of his neighbor's prejudices.[21] The goal of the Committee's exposure system—and its rapidly spreading counterparts[22]—is nothing more or less than the restoration of the social and economic controls which gave dissent no quarter.

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[21] As John P. Roche put it in "American Liberty: An Examination of the 'Tradition' of Freedom," *Aspects of Liberty*, Konvitz and Rossiter (eds.) (Cornell University Press, 1958), "In a very real sense the very impersonalization of urban life is a condition of freedom; it is quite possible to live differently and believe differently from one's neighbors without their knowing, much less caring, about the deviation." See Nye, *Fettered Freedom* (Michigan State College Press, 1959) for an account of liberty in America in the pre-industrial era.

[22] *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Bates* v. *Little Rock*, 361 U.S. 516; *Uphaus* v. *Wyman*, 360 U.S. 72; *Talley* v. *California*, 362 U.S. 60. See also the *amicus curiae* brief filed in the last cited case for a review of the emerging pattern of disclosure requirements.

It is by now frighteningly clear that the exposure system will, in a time of political and social failure, serve as the instrument of despotism. But the Court should not wait until the Committee organizes lynch mobs. It is enough that today dissenters, as rarely before in our history, feel themselves too menaced by their environment to breast the tides of conformity and repression.

IV. The Trial Court Erroneously Excluded Relevant and Material Evidence.

As part of its proof that the hearing was called for exposure purposes petitioner offered into evidence a newspaper account of an interview with Representative Walter, held on November 19, 1954, shortly before he assumed the Chairmanship of the Committee (R. 193-194, 214, D.E. 9, 9-A *id.*). This account was offered together with related material as Defendant's Exhibit 9 for identification (R. 192-193). The Prosecutor objected (R. 193) not "on the best evidence rule, or lack of authenticity and I do not object on these grounds. I do object that these are immaterial and irrelevant under the *Watkins* decision." [23]

The trial judge then rejected (R. 193) the proferred material, on the authority of the following language in the *Watkins* decision below, that:

> "[A valid legislative] purpose cannot be solved by generalities culled from speeches, many of them no doubt partially extemporaneous, or from partisan assailants, critics, friends or defenders of some projects or cause." [24]

[23] The Government had agreed earlier (R. 169) that there was no issue as to the "accuracy or authenticity" of a large group of documents offered by petitioner to show a lack of legislative purpose.

[24] 233 F.2d at 687.

Petitioner then reoffered Representative Walter's newspaper interview separately and pointed out (R. 194) that Representative Walter's announcement fell outside of the range of material condemned by the lower court in the *Watkins* case as inadequate to establish lack of a legislative purpose. "It seems," petitioner argued, " . . . to be a reasonably thought-out statement of purpose and objective which was followed through, to hold hearings in a community, expose people before their neighbors and fellow workers. 'And I have every confidence that the loyal Americans who worked with them will do the rest of the job.' As a matter of fact, we have already a similar statement in the record with reference directly to Mr. Gojack" (R. 194).

The trial court reiterated its earlier exclusionary ruling (R. 194). This ruling was error.[25] The Goverment contended at the trial that "the question of exposure and lack of legislative purpose . . . is not a proper matter for the reception of evidence" (R. 163). But this cannot be the law for it would render nugatory the Court's ruling in the *Watkins* case, *supra*, barring exposure for exposure's sake as an investigative objective. If the Committee cannot use its power for the specific purpose of exposing a witness, then the witness must have the right to demonstrate such an abuse of power in a courtroom. Indeed, the trial court, itself, did not adopt the Goverment's view in this respect. The fact that the subcommittee did not formally refer to exposure but announced another purpose merely creates a conflict of fact which the courts must resolve. Compare *United States* v. *Tobin*, 195 Fed. Supp. 588 (D.C.D.C.); cf. *Sinclair* v. *United States*, 279 U.S. 263, 295. It may be that a presumption protects the officially-stated purpose but such a presumption, like any other, may

[25] The trial court similarly erroneously excluded other evidence offered to show the Committee's exposure purpose (R. 184-191).

be rebutted. "A legitimate legislative purpose will be presumed when the general subject of investigation is one concerning which Congress can legislate . . . but any presumption in a criminal case can be controverted by adequate evidence to the contrary." *United States* v. *Cross*, 170 Fed. Supp. 303, 308-309 (D.C.D.C.). See also *United States* v. *Icardi*, *supra*.

We submit further that statements of a Committee member about the future Committee program on his assumption of the Chairmanship are competent to establish the purpose of the first Committee hearing which took place after he became Chairman. This interview was not, to use the language of the *Watkins* decision below, *supra*, a statement "from partisan assailants, critics, friends or defenders of some project or cause." This was an interview not with a mere member of the Committee, not with a staff member, not with its counsel but with an authoritative representative, its Chairman-to-be. If he could not speak with authority on the future program of the Committee, who could?

Moreover, the statement is undeniably relevant and material to an evaluation of the Committee's purpose. It was, as we have seen (*supra*, p. 6), given out as the Committee's plan of action prior to the instant hearing. Indeed, this was the very first hearing called after the policy was announced. The record shows how closely the new policy was followed. The new policy contemplated that the public would be urged (not merely invited) to participate in the exposure process. To this end the Chairman notified the local press on two separate occasions of the proposed issuance of the subpoena—even before it was served (*supra*, pp. 7-9). And, as petitioner's counsel pointed out at the trial (*supra*, p. 15), the incitation of community reprisal against petitioner (*supra*, p. 15) followed with deadly accuracy the announced tactic of the "new plan."

As we have pointed out (*supra*, pp. 46-47), the very nature of investigative hearings precludes a rigid or formal canon for evaluating purpose. The lower court's decision in *Watkins* noted (233 F. 2d at 687) that, "We must judge each inquiry in its own setting and upon its own facts." The Walter interview in issue here was rejected in *Watkins*. But it was given in November, 1954, some eight months *after* the Committee hearing in which Watkins testified (233 F. 2d at 684) not, as here, shortly before. The trial court, we submit, mechanically followed the ruling in the *Watkins* case without considering the proferred evidence "in its own setting and on its own facts."

The trial court also barred an attempt to show (R. 160) that Labor Relations Director McClaren was aware of the fact that petitioner would be subpoenaed some three days before he in fact was subpoenaed and that he announced this impending event to the employees at the Magnavox plant where a collective bargaining election was pending. We think that petitioner should have been allowed to demonstrate this. We submit that it was highly relevant to proof of an exposure purpose. Petitioner had made this charge to the Committee in a telegram which was admitted into the record and relied on by the Government and the court below (R. 222-223) to show how intemperately petitioner behaved. But he should have been permitted to adduce evidence to show that his protest was grounded in his outrage over the Committee's blatant abuse of power.

V. Petitioner Was Not Advised of the Subject Under Inquiry or the Pertinency of the Individual Questions.

The court below rejected our contention that petitioner was denied an explanation of the matter under inquiry and the pertinency of the questions thereto as required by *Watkins* v. *United States*, 354 U.S. 178, 208-209, 214-215. See also *Scull* v. *Virginia*, 359 U.S. 352, 353. The court ruled (R. 231) that "nowhere does it appear that appellant was without knowledge of the real purpose of the hearing or the pertinency of the question". The court below rested its conclusion on the claim that the announcement by the sub-committee chairman of the purposes of the hearing clearly communicated the subject matter of the hearing to petitioner (R. 231). But there is no showing at all in the record that petitioner was present when the announcement was made. It is true his counsel was also counsel for the first witness, but we think that the *Watkins* rule requires that the subject matter of the hearing and its pertinency be communicated to the witness and not to his counsel.

The court ruled that, as in the *Barenblatt* case, petitioner's objections to the jurisdiction of the Committee showed that he was aware of the Committee's purpose to question him as it did. But such a conclusion is quite unfounded. The objections assumed that the purpose of the Committee would follow the lines of the Chairman's announcement: to expose petitioner and to break the Union. Under these circumstances it could hardly be said that the objections reflected an awareness of a contemplated subject under inquiry. In such an "inquiry" all questions are pertinent if only they are sufficiently embarrassing, if only they serve to harass and expose the witness and his associates. But "pertinent" means "pertinent to a subject matter properly under inquiry, not generally pertinent to

the person under interrogation." *Rumely* v. *United States*, 197 F.2d 166, 177 (App. D.C.); *United States* v. *Orman*, 207 F.2d 148, 153 (C.A. 3).

It is equally fallacious to argue, as the court below did, that the objections filed by petitioner cannot be viewed as imposing a requirement on the Committee to explain the subject under inquiry and the "connective reasoning whereby the precise questions asked relate to it". See *Watkins* v. *United States*, *supra*.

The objections filed by petitioner obviously constituted an objection to all of the questions which might be asked on the ground that they were pertinent only to an illegal subject matter, namely, the exposure of himself and his union. Under these circumstances, it seems to us that the Committee was obliged to make clear to petitioner, both the nature of the subject matter under inquiry and the connective reasoning which made the questions pertinent. The Committee itself thought that petitioner's objections called for some response from it when they were filed. Although the Committee remained silent until all the questions had been asked which were in issue here, it ultimately dismissed the objections "*nunc pro tunc*" (*supra*, p. 11). Obviously this retroactive rejection was inadequate to give petitioner notice either at the time his objections were filed or when the questions in issue were asked that the Committee thought the purpose of the inquiry—a proper legislative purpose—had been adequately communicated to him.

VI. The Indictment Was Insufficient.

The indictment (R. 1) alleges only that in his appearance before the Committee petitioner was asked "questions which were pertinent to the question then under inquiry" and that he "unlawfully refused to answer those pertinent questions". These allegations are insufficient.

A. The Failure to Specify the Matter Under Inquiry to Which the Questions Put to Petitioner Are Said to Be Pertinent

The allegation that the questions put to petitioner were pertinent "to the question then under inquiry", without any description of the latter, is meaningless, and fails to satisfy the well-organized requirement that an indictment under 2 U.S.C. 192 must plead pertinency as an essential element of the offense. *Sinclair* v. *United States, supra.* The Court in *Watkins* v. *United States, supra,* ruled that the elucidation of pertinency to the witness at the hearing is an indispensable due process requirement. We think the same reasoning applies to an indictment under the contempt statute.

We recognize that indictments are to be scrutinized for their genuinely informative qualities, and not for formal and technical defects. The lack of a formal allegation may not be fatal if its substance sufficiently appears from the facts alleged. *Hagner* v. *United States,* 285 U.S. 427; *Gariepy* v. *United States,* 189 F.2d 459 (C.A. 6). The indictment against petitioner contains the formal charge that the questions were pertinent, but the presence or absence of the naked allegation is not the test. The indictment might be upheld without it, if the other allegations adequately described the question under inquiry so that the facts bearing on pertinence sufficiently appeared. *United States* v.

Fields, 6 F.R.D. 203 (D.C.D.C.). But the allegation alone, without the facts, is insufficient *Rolland* v. *United States*, 200 F.2d 678 (C.A. 5); *Sutton* v. *United States*, 157 F.2d 661 (C.A. 5); *Lowenburg* v. *United States*, 156 F.2d 22 (C.A. 10). "We recognize the general rule that an indictment is insufficient if it states conclusions rather than the facts upon which the conclusions are based." *Butzman* v. *United States*, 205 F.2d 343, 348 (C.A. 6), cert. denied 346 U.S. 828. Under that principle, petitioner's indictment is plainly insufficient.

When the statute under which a defendant is indicted describes in specific terms all the elements of the offense, an indictment in the language of the statute may be sufficient without more. But when the statute is couched in general terms, as is the case here, mere repetition of statutory language is not enough; the indictment must allege the facts with particularity. *United States* v. *Carll*, 105 U.S. 611; *Frankfort Distilleries* v. *United States*, 144 F.2d 824 (C.A. 10), rev'd on other grounds 324 U.S. 293.[26]

The statute under which petitioner's indictment is laid is "in generic terms" as it is intended for application to congressional investigations generally. Consequently, it is necessary that the indictment identify and describe with particularity the "question under inquiry" to which the questions put to the witness are deemed pertinent. *Sinclair* v. *United States*, *supra*. This, the indictment fails to do. Indeed, as the indictment stands, the "question then under inquiry" might have been the entire range of subjects committed for investigation to the Committee by House Resolution 5. But the indictment does not so state. And it was for

[26] As Judge Rifkind has put it: "Where the definition of the crime is in generic terms, the charge must not be couched in the same terms but it must descend to particulars." *United States* v. *Waltham Watch Co.*, 47 F. Supp. 524 (D.C.N.Y.).

the grand jury and not the prosecutor to say so. Furthermore, the questions put to petitioner certainly were not—indeed it is hardly conceivable that any question could be—pertinent to all of the matters in the Committee's jurisdiction.

Pleading, as Chief Judge Clark remarked in the *Lamont* case (236 F.2d 313, 317, C.A. 2), is a "practical thing," and he went on to contrast the "over-elaboration" which in former times often defeated its purpose with the "formalism of generality" reflected in indictments such as those involved in that and the present cases. This indictment did not convey the information needed by the trial court to rule on pertinence and by the petitioner to prepare his defense. "The initial step in determining the pertinency of the question is to ascertain the subject matter of the inquiry then being conducted by the subcommittee." See *Bowers* v. *United States*, 202 F.2d 447, 448 (App. D.C.). But the indictment did not enable petitioner or the court to take that first step.

There is no conceivable reason why the court and parties should be obliged to guess at the "question then under inquiry" which, if unspecified, leaves the allegation of pertinency meaningless. In this respect, the indictment may be usefully contrasted with the recent indictments in the Second Circuit, *United States* v. *Seeger*, No. C-152-240; *United States* v. *Yarus*, No. C-152-239; *United States* v. *Sullivan*, No. C-152-238, and with those in such comparable cases as *United States* v. *Debrow*, 346 U.S. 374; *United States* v. *Lattimore*, 215 F.2d 847 (App. D.C.); *United States* v. *Icardi*, 140 F. Supp. 383 (D.C.D.C.); and *United States* v. *Fields*, 6 F.R.D. 203 (D.C.D.C.).

In *United States* v. *Seeger* and companion cases, *supra*, the indictments state that pursuant to authorization the Committee on Un-American Activities "directed that an

investigation be conducted of Communist infiltration in the field of entertainment in New York." In the *Debrow* case, the defendant was indicted for giving a false answer to questions put to him at a hearing of a subcommittee of the Senate Committee on Expenditures in the Executive Departments. Just as "pertinency" is an essential element of the crime under 2 U.S.C. 192, so is "materiality" an essential element of the crime of perjury before a congressional committee and, as the Supreme Court has declared: "The question of pertinency • • • is not essentially different from the question as to the materiality of false testimony charged as perjury in prosecutions for that crime." See *Sinclair* v. *United States, supra* at p. 298. The indictment in the *Debrow* case[27] unlike that in the present case, contained a very explicit allegation that the subcommittee "was conducting a study and investigation of whether applicants for appointments to offices and places under the Government of the United States had been and were being solicited and required by numerous persons within the State of Mississippi to make political contributions and donations as a condition precedent to receiving such appointments • • • ." Thereafter, the questions put to the defendant were set forth in context, so that their materiality to the question under inquiry was supported by the facts set forth in the indictment, and not by a bare allegation, as in the present case.

The same specificity of allegation was present in the *Icardi* case, *supra*, where the charge that the questions put to the defendant were material was supported by a statement that the matter under inquiry by the special subcommittee was " • • • the circumstances surrounding the disappearance and death of Major William V. Holohan

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[27] The indictment in the *Debrow* case is set forth in the opinion below, 203 F. 2d 699, at 702-703 (C.A. 5).

while a member of the armed forces of the United States on assignment to the Office of Strategic Services in the Italian campaign of 1944." [28]

The *Fields* case, *supra*, is a good illustration of Chief Judge Clark's observations, quoted above, about the practical aspects of pleadings. There the defendant was indicted under 2 U.S.C. 192 for failing to produce documents in response to a subpoena issued by a special investigating committee of the House of Representatives. The indictment did not contain a formal allegation of pertinency, but it did contain a full description of the matter which the committee had under inquiry, so that the facts supporting the element of pertinency were set forth.[29]

There is surely no reason why the present indictment should not be held to similar standards of sufficiency. No problem peculiar to this particular area affords any justification for this looseness, as the *Lattimore* case, *supra*, demonstrates. The indictment in the *Lattimore* case described the general scope of the subcommittee's function as set forth in the authorizing Senate resolution, and then

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[28] The indictment is on file in the district court, Criminal No. 821-55.

[29] Sustaining the sufficiency of the indictment, Judge Holtzoff pointed out (6 F.R.D. at 204):

> "It sets forth that the House of Representatives of the United States, by resolution identified in the indictment, created a committee to investigate the sale or other disposition of property which the United States had acquired in connection with the national defense. The indictment then enumerates certain specific items which the resolution directed the committee to investigate. The indictment further alleges that the defendant was summoned to produce certain documents concerning one of the items which it appears from the indictment the committee was authorized to investigate."

carefully specified the question under inquiry at the time of the defendant's appearance.[30]

By a closely-divided vote, the Court of Appeals held that two of the questions put to Lattimore were not immaterial "from the face of the indictment."[31] This circumstance strongly suggests that the Government has resorted to a vague and loosely drawn accusation in the present case because a properly-drawn indictment would at once disclose

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[30] It stated (215 F.2d at 856-857):

"2. That at the time and place aforesaid, the said Senate Subcommittee, inquiring as aforesaid, was conducting a study and investigation of the administration, operation, and enforcement of laws, relating to espionage, sabotage, and the protection of the internal security of the United States, and of the extent, nature, and effects of subversive activities in the United States; including but not limited to the extent to which the Institute of Pacific Relations was infiltrated and influenced or controlled by agents of the Communist world movement; the extent to which these agents and their sympathizers worked through the Institute into the United States Government to the point where they exerted influence on the United States Far Eastern policy, and the extent to which they still exert such influence; and the extent to which such agents and their sympathizers misled American public opinion, particularly with regard to Far Eastern policy.

"3. That it was material to the study and investigation to ascertain the extent to which the Institute of Pacific Relations had been infiltrated and influenced by agents of the Communist world movement and their sympathizers and the extent to which any of these persons had exerted influence on United States Far Eastern policy from posts they secured in the United States Government; or had influenced American public opinion with reference to said policy; and what participation in or knowledge of any such situation described above was had by Owen Lattimore, who had been an important figure in the Institute of Pacific Relations, and editor of one of its official publications, 'Pacific Affairs', and who had been an official of the United States Government; and it was further material to ascertain whether Lattimore himself had been a promoter of Communism or Communist interests."

[31] (215 F.2d at 853) Four of the nine judges dissented on the ground that all of the questions put to Lattimore were immaterial on the face of the indictment.

that the questions put to petitioner were not in pursuance of and pertinent to a valid legislative subject matter.[32]

B. The Failure to Allege That Petitioner Acted Wilfully

In the *Lamont* case, District Judge Weinfeld held (18 F.R.D. 27) that the indictments involved there were fatally defective for failure to allege that the refusals were "deliberate" or wilful. The decisions of this Court, upon which Judge Weinfeld relied, in *Quinn*, 349 U.S. 155, and in *Bart*, 349 U.S. 219, seem to us to dispose of this matter. In *Quinn* the Court held (at 165) that, "Section 192, like the ordinary federal criminal statute, requires a criminal intent —in this instance, a deliberate, intentional refusal to answer." The Court further ruled that, "This element of the offense, like any other, must be proved beyond a reasonable doubt."

If a deliberate, intentional refusal is an element of the offense which must be proven, it must also be alleged in the indictment. *United States* v. *Hess*, 124 U.S. 483.

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[32] In *United States* v. *Kamin*, 135 F. Supp. 382 and 136 F. Supp. 791 (D.C. Mass.), District Judge Aldrich denied a motion to dismiss a comparable indictment. The case went to trial, and Judge Aldrich dismissed some of the counts at the conclusion of the Government's case and directed a verdict of acquittal at the end of the trial, basing his rulings on the lack of pertinent relation between the questions put to the defendant at the subcommittee's hearing, and the matters into which the subcommittee was authorized to inquire. These defects would have been plainly disclosed by a properly-drawn indictment and "an unnecessary trial might have been averted had it been made clear in advance thereof that there was lacking an essential element of the crime charged, namely, that the inquiry was within the subcommittee's authority." *United States* v. *Lamont*, *supra*, at 315.

VII. Petitioner Was Deprived of His Right to a Fair and Impartial Grand Jury.

Petitioner sought by motion a dismissal of the indictment or a preliminary hearing on the ground that eleven members of the indicting grand jury were government employees and that the loyalty-security program had engendered fears among government employees which created actual bias and prejudice against petitioner. In the interest of brevity and the convenience of the Court, we rely on Argument I of the Brief for Petitioner in *Russell* v. *United States*, No. 8. Unlike the *Russell* case, petitioner did not show that a majority of the grand jurors were government employees. But, we submit, a hearing would have determined not only whether the government employees were biased, but also whether that bias was communicated to the other grand jurors.

Conclusion

For all the above reasons the conviction should be reversed with directions to dismiss.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 128

JOHN T. GOJACK, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 215–232)[1] is reported at 280 F. 2d 678. The opinion of the district court (Tr. 449–451) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 1960 (R. 233). On July 12, 1960, Mr. Justice Black extended the time for filing a writ of certiorari to and including August 17, 1960. The petition was filed on August 16, 1960, and certiorari was granted on June 5, 1961 (R. 235; 366 U.S. 943).

[1] "R." refers to the printed record. "Tr." refers to the typewritten transcript of the record.

The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the courts below correctly held that the House Committee on Un-American Activities was acting pursuant to a valid legislative purpose when it questioned petitioner.

2. Whether the Committee violated petitioner's rights under the First Amendment.

3. Whether petitioner can challenge the pertinency of the questions he refused to answer for the first time at his trial, and, if so, whether he was apprised of their pertinency.

4. Whether petitioner, who was indicted by a grand jury composed, in part, of federal employees, was entitled to dismissal of the indictment or a hearing on the basis of general allegations that such jurors were biased and afraid as a result of the government security program.

5. Whether the indictment was invalid because it failed to specify the subject under inquiry and did not allege that petitioner's refusal to answer was wilful.

STATUTE AND RULES INVOLVED

The pertinent portions of 2 U.S.C. 192, Rule XI of the Rules of the House of Representatives, and Rule 7(c) of the Federal Rules of Criminal Procedure are set forth at pages 5–6 of petitioner's brief.

STATEMENT

Petitioner was indicted on nine counts, each of which charged unlawful refusal to answer a different

question put to him by a subcommittee of the Committee on Un-American Activities of the House of Representatives (R. 1–3). Having waived a jury trial, petitioner was convicted by the court on six of the nine counts (R. 217),[1] and sentenced to nine months' imprisonment and a fine of two hundred dollars. On appeal, the conviction was affirmed (R. 233).

The pertinent facts may be summarized as follows:

The Committee had been engaged intermittently in investigating the Communist Party activities of officials of the United Electrical, Radio and Machine Workers of America (the "U.E.") from August 1949 until February 1955 when petitioner appeared before the Committee (R. 26–27). It had received sworn testimony in 1951 from one Decavitch, a long-time district president of the U.E. and a former Communist, that the Communist Party had infiltrated the union to the extent that of its important officials "99.9 per cent" were "pure Communist Party members" (R. 27, 29). In July 1953, a former Communist, Jack Davis, who had been an organizer for the U.E., testified that all of the organizers for the U.E. who attended meetings were members of the Communist Party (R. 29–30). Before petitioner was subpoenaed, the Committee had information that he was a vice-president of the national union and the president of District 9 (R. 30–31).

On February 9, 1955, the Committee announced that hearings would begin in Fort Wayne, Indiana,

[1] Count one was dismissed when the United States Attorney was obliged to elect. On counts two and five, petitioner was found not guilty because the subcommittee failed to disallow his objection and did not demand an answer (R. 215–217).

on February 21, 1955 (R. 85, 89). A newspaper account mentioned petitioner, who was a resident of Fort Wayne, as a prospective witness (R. 136). On February 10, Congressman Walter, the Chairman of the Committee, received a telegram from petitioner protesting on behalf of the Union the scheduling of the hearings for February 21, 1955, in view of a National Labor Relations Board election at the Magnavox plant on February 24, 1955, involving the U.E. and rival unions (Gov. Ex. 9; R. 86–88). The telegram claimed that the hearing would be a "flagrant use of a Congressional Committee for union-busting"; stated that in view of the criminal conviction of a former Committee Chairman "for bribery [*sic*], we have every right to ask whether the Magnavox Company is paying for this Congressional assistance in union busting"; argued that the Union had "the right to know which type Matusow witness Represenative Walters [*sic*] and the Magnovox Company would use"; characterized a previous Committee investigation as a "witch-hunt" in which Congressman Walter made a "lying claim" against the Union; and charged that the Committee was run by "publicity-mad zealots" who "tarnish[ed]" the Congress with their "stench" (R. 87–88).

On February 14, 1955, George Goldstein, U.E.'s Washington representative, sought a continuance of the hearing (R. 68, 76). Because of the nature of the telegram sent by petitioner four days earlier, Chairman Walter decided to hear Mr. Goldstein only at a reported session (R. 79).[3] At the interview the

[3] The transcript of the interview was read into the record below (R. 73–79).

Chairman told Mr. Goldstein that the Committee first knew of the N.L.R.B. election when the Chairman received petitioner's telegram (R. 77). The following exchange then took place between Mr. Goldstein and Chairman Walter (R. 77):

> Mr. Goldstein: Let me say this. As far as I am concerned, this visit of mine was simply for the purpose of asking the question that I mentioned a moment ago, whether or not you were aware of [the N.L.R.B.] election, and if not, to tell you about it, and to say this: that it looked to us and it would look to a lot of people as though the coincidence of the two was more than a coincidence. Now, I am saying that without accusing you.
>
> Chairman Walter: I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Mr. Goldstein refused to state any definite knowledge he had about an N.L.R.B. election, although he was repeatedly asked to do so (R. 78–79). The Committee adjourned without any action being taken (R. 79).

Petitioner's subpoena to appear at the February 21 hearing was served on February 15, 1955 (R. 22). The next day, the counsel for the Committee, Frank Tavenner, received a telegram from an attorney representing petitioner which requested a continuance un-

til "any time after next week," because of the attorney's extremely heavy schedule and also because of the N.L.R.B. election at Magnovox Company (R. 23). The request was at first denied. After further communication between counsel, Mr. Tavenner investigated the proposed election and explained the situation to Chairman Walter; the latter agreed that the hearings be postponed (R. 23). The hearings were rescheduled for February 28, 1955, in Washington, D.C. Petitioner's counsel was notified of the rescheduling and a new subpoena was issued and served on petitioner (R. 23, 24).

Petitioner appeared on February 28 and March 1, 1955, before a subcommittee in Washington, D.C. Upon convening the subcommittee on the morning of February 28, Representative Moulder, the acting chairman, explained the purposes of the hearing as follows (R. 60; Gov. Ex. 8, p. 19):[4]

> There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda.

Before the first witness, Julia Jacobs, was sworn, her attorney (R. 201–202) filed with this Committee a motion (Def. Ex. 3) on her behalf, as well as on behalf of two other clients, petitioner and Lawrence Cover, who were subpoenaed to appear before the

[4] Government Exhibit 8 is the Hearings Before the Committee on Un-American Activities, House of Representatives, 84th Cong., 1st Sess., entitled *Investigation of Communist Activities in the Fort Wayne, Indiana, Area.*

subcommittee (Gov. Ex. 8, p. 20; R. 201–202). The motion claimed that the Committee did not have a valid legislative purpose; that no criminal charges had been made against the three witnesses and, in any event, under Article I, Section 3 of the Constitution, only the courts can investigate crime; that the Committee's authorizing resolution did not give it power to engage in breaking a union; that if the resolution had purported to convey this power, it would violate the First Amendment; that the authorizing resolution was unconstitutionally vague; and that compulsory disclosure of political beliefs and associations violated the First Amendment.

At the start of petitioner's testimony on February 28, he objected that the investigation did not have "a bona fide legislative purpose" (Gov. Ex. 8, p. 72). He answered a series of questions concerning his union offices, military service, and employment record (*id.* at pp. 73–79; R. 64–66). After a colloquy concerning "union busting", Congressman Doyle, a member of the subcommittee, told petitioner that "[i]f you will tell us the truth and the facts about the extent to which there are Communists in your union, that will be helpful. * * * We want to know if you are a Communist and the extent to which you have been" (Gov. Ex. 8, p. 79). Petitioner testified that he was still president of district council 9, vice-president of the national union, and a member of the general executive board (*id.* at pp. 73, 83–84; R. 67).

When petitioner was asked whether he had ever been a member of the Communist Party while holding any of the union offices, he stated that the Committee did not have the "right to investigate my political beliefs or affiliations, especially so when its purpose is union-busting" (R. 94). The question was rephrased several times, but petitioner still refused to answer on the ground that he had signed affidavits that he was not a Party member yearly from 1949 to 1954 and because the question violated the First Amendment (R. 94–95). Petitioner was then asked whether he had ever been a member of the Communist Party (count one, dismissed on the election of the government) (R. 96). Petitioner again invoked the First Amendment, but denied any reliance on the Fifth Amendment (R. 97).

Petitioner was asked whether he was a Party member at any time during 1948 (count two, on which petitioner was found not guilty since he was never directed to answer) (R. 98). He refused to answer on the ground that the question violated the First Amendment and the hearing had no legislative purpose (R. 99). Petitioner then refused to answer whether he was "now a member of the Communist Party" (count three), because his affidavit stated that he was not a Communist, because the question violated the First Amendment, and because "I am not going to cooperate with union busters" (R. 100–101). The hearings were then adjourned for the day (Gov. Ex. 8, p. 89).

Petitioner was the first witness when the hearings were renewed on March 1, 1955. After further ques-

tions about Communist activities in labor unions (Gov. Ex. 8, pp. 91–92; R. 103), the Committee asked whether petitioner attended a union meeting in 1946 at which he presented a letter written to him by the secretary of the Communist Party (R. 103). The Committee read to petitioner the minutes of the meeting which said that a letter had been sent to "Brother Gojack" from the secretary of the Party offering to donate a hundred copies of the Daily Worker (R. 106). Petitioner could not recall these events, nor who was the Party secretary or chairman in Indiana at the time (R. 106–107, 109–110). Petitioner repeated his objections to the hearings on the ground that they had no legislative purpose and violated the First Amendment, as well as that they exceeded the authority given the Committee by Congress (R. 108, 111). The Committee counsel asked petitioner whether he was acquainted with Elmer Johnson[4] (R. 107, 112). Congressman Scherer stated that "[y]ou have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way that you knew Johnson" (count four) (R. 112). Petitioner based his refusal to answer on the Committee's use of paid informers whom he called liars, on the First Amendment, and on the Committee's lack of author-

[4] The Committee had heard testimony that Elmer Johnson was the chairman of the Communist Party in Indiana (R. 32–34).

ity under its authorizing resolutions to break a union (R. 113; Gov. Ex. 8, pp. 102–104).

Petitioner refused to answer whether he knew Henry Aron* on the same ground that he had refused to answer the earlier questions, particularly the Committee's use of informers and the First Amendment (count five, on which petitioner was found not guilty) (R. 114–115). Petitioner was then asked and refused to answer on the basis of the First Amendment whether Johnson or Aron ever addressed a group of people when petitioner was present (count six) (R. 115–116).

After petitioner had charged a former member of the Committee with using a "paid liar's testimony to try to break [the Square D] strike" (Gov. Ex. 8, p. 105), he was questioned concerning the State Department's refusal to issue him a clearance in 1952 on security grounds (*id.* at pp. 112–118, 120, 122–123, 129–132). During this discussion, after petitioner had objected that the Committee was attempting to find him guilty without a trial, Congressman Doyle stated (*id.* at p. 125):

> [W]e are not here finding anybody guilty. We are here as a group of Congressmen trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president. That is what we are here for, young man; not to find you guilty of anything, but to find out the extent to which you know of Communist domination or control in your union, if there is such domination and control or infiltration.

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*The Committee had heard testimony that Henry Aron was the secretary of the Communist Party in Indiana (R. 32–34).

Petitioner testified that he knew Russell Nixon, but when asked whether he knew Nixon to be a Party member, petitioner said that he knew him as legislative representative of the U.E. in Washington (R. 116, 119).[7] Petitioner said he would not answer questions concerning political beliefs and affiliations because of the Committee's lack of jurisdiction (R. 119–120). Petitioner then again refused to answer whether he knew Russell Nixon to be a member of the Communist Party (count seven) on the ground that the Committee's authorizing resolution did not give the Committee power to expose people (R. 121).

The Committee counsel handed petitioner a letter from Russell Nixon, which had been sent immediately after a peace pilgrimage to Washington, enclosing a letter from the Metal Workers Trade Union, an organization with headquarters in Paris which the Committee believed was Communist-dominated (R. 123; Gov. Ex. 8, p. 131; see R. 50–58). Petitioner admitted that he had sent the latter letter, which praised the Stockholm peace appeal, to locals of the U.E. (Gov. Ex. 8, pp. 141–145). The Committee counsel noted that petitioner had said that he had engaged in many meetings on behalf of peace and informed petitioner that the Committee believed that the Communist Party had been involved in the Stockholm peace appeal and similar activities (R. 121). Petitioner then refused to answer whether he had taken "an active part in

[7] Nixon had earlier appeared as a witness before the Committee and refused to answer questions concerning his Party activities (R. 118–119). Dorothy Funn, a former member of the Communist Party who had been a legislative representative for the National Negro Congress in Washington, had testified before the Committee in 1953 that Russell Nixon was a member of the Communist Party (R. 43–48).

the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the America Peace Crusade" (count eight) (R. 122). When petitioner based his refusal to answer on the First Amendment, the Committee counsel said (R. 122):

> I want to make it clear, Mr. Gojack, that I am not interested at all in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power.

Congressman Doyle said (R. 122–123):

> Mr. Chairman, may I add * * * that I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

Petitioner refused to answer, on the grounds he had already stated, whether he had taken part in the pilgrimage to Washington, whether he was a member of

the American Peace Crusade, and whether he had frequently served as chairman of its meetings (Gov. Ex. 8, p. 148).

Petitioner was shown a copy of the February 1, 1951, issue of the Daily Worker which listed a "John Gojack, international vice president, UERMWA, Fort Wayne, Ind." as an initial sponsor of the American Peace Crusade (R. 124; see R. 41).[8] Petitioner refused to answer who had solicited him as sponsor, on the grounds he had previously stated (count nine); also he would not say what method of solicitation had been used (R. 124–125).

When petitioner refused to answer whether he was a sponsor of a particular conference because the Committee could not "be a court, jury, and prosecutor," Congressman Doyle said (Gov. Ex. 8, p. 153):

> [W]e do not try to do that. We are trying to get your cooperation as one of the labor leaders of our country, to give us facts which will help us more intelligently to legislate with reference to the extent to which the Communist conspiracy has entered your union and either controlled it or tried to control it.

The Committee counsel stated that the Committee had information that petitioner was a member of the American Peace Crusade, as well as six other organizations (*id.* at p. 154). Petitioner refused to answer

[8] The Committee also had a leaflet of the American Peace Crusade, which was signed by a "John Gojack," entitled "Bring Our Boys Home From Korea. Make Peace With China Now" (R. 41).

whether he was a member of any of those organizations (*ibid*).

SUMMARY OF ARGUMENT

I

The Committee was acting pursuant to a valid legislative purpose.

A. It is established that the Committee, in conducting extensive investigations into Communist activities in this country, has been pursuing a valid legislative purpose. In *Barenblatt* v. *United States*, 360 U.S. 109, 127–128, the Court noted that Congress "has enacted or considered in [the security] field a wide range of legislative measures, not a few of which have stemmed from recommendations of [this] very Committee" and held that investigations of Communist activities had a valid legislative purpose. See also *Wilkinson* v. *United States*, 365 U.S. 399, 409–411; *Braden* v. *United States*, 365 U.S. 431, 433–435.

Petitioner claims, relying on statements of the Chairman of the Committee and what he alleges are the Committee's methods of operation, that the Committee's investigations are conducted for purposes of exposure, not legislation. But an identical argument, based on the same or similar evidence, was rejected by this Court in *Watkins* v. *United States*, 354 U.S. 178, 199–200, and again in *Barenblatt*, and *Wilkinson*, on the ground that "[s]o long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power" (*Barenblatt*, 360 U.S. at 132).

B. The record shows that the particular investigation involved in this case had a valid legislative purpose. The Committee had information that the union of which petitioner was an important official was dominated by Communists. The Committee reasonably believed that petitioner could supply information concerning Communist activities in the union. This purpose was stated to petitioner at the hearings. The only suggestions at the hearings that the Committee's purpose was to "bust" the union, to expose petitioner, or try and convict him, were petitioner's own claims which the Committee repeatedly denied.

Petitioner relies on newspaper stories concerning statements made by members of the Committee. But, as we have noted, this Court has rejected attempts to investigate the motives of Committee members based on official statements on the floor of Congress, at Committee hearings, and in Committee reports; *a fortiori*, a defendant cannot challenge the legislative purpose of a Congressional committee on the basis of statements made to the press.

C. The hearings did not constitute a bill of attainder. Only a legislative act which punishes a person by depriving him of a civil or political right without a judicial trial constitutes a bill of attainder. The publication of facts concerning petitioner's activities was not a deprivation of such a right. In any event, even if his "exposure" did in fact deprive him of a recognized right, this disability must have been the intended object of Congress in order to violate

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the bill of attainder clause. *Flemming* v. *Nestor*, 363 U.S. 603, 613–614. As we have seen, however, the Committee's aim was to secure information from petitioner as to Communist activities in labor unions, not to expose him.

II

The Committee's investigation did not violate the First Amendment. This Court has held in *Barenblatt* v. *United States*, *supra*, that the Committee can, consistent with the First Amendment, investigate all aspects of Communist activity. Thus, the Committee did not violate the First Amendment when it questioned petitioner about Communist activties in labor unions—a subject about which it could reasonably believe he possessed pertinent information.

III

As we have shown in our brief in *Shelton* v. *United States*, No. 9, this Term, pp. 25–32, a witness before a Congressional committee cannot claim for the first time at his trial that he was not apprised by the Committee of the pertinency of the questions. Here, petitioner made numerous objections to the authority of the Committee to conduct the hearing and to ask particular questions, but he never even suggested that he was in doubt about the pertinency of the questions he refused to answer. His preliminary statement, a general challenge to the power of the Committee, came before any questions were asked and therefore could not, and did not, claim that the questions were not pertinent. In *Barenblatt*, this Court held that a similar general statement, attacking the jurisdiction and

power of the Committee, did not properly raise the issue of pertinency.

B. In any event, petitioner was clearly apprised of the pertinency of the questions. He was apparently present when, at the start of the hearing, the chairman of the subcommittee explicitly stated that the investigation was intended to secure information on Communist activity in labor unions. This statement was repeated by Congressman Doyle during the testimony of the first witness, which petitioner admitted hearing, and twice during petitioner's own testimony.

The question whether petitioner was then a member of the Communist Party was on its face pertinent to the subject of Communist activities in labor unions. The pertinency of an identical question was held in *Barenblatt* to be "clear beyond doubt" to the subject of Communist activity in education (360 U.S. at 125). Since petitioner was given a general sentence on all six counts, which was less than the maximum authorized under any one count, the judgment below must be affirmed if his conviction on any one count was valid. Moreover, the questions involved in the other six counts were, either on their face or as shown by statements made to petitioner at the time, clearly pertinent.

IV

Petitioner claims that he was entitled to dismissal of the indictment or at least a hearing because of the bias of government employees who were on the grand jury. We have shown in our brief in *Shelton, supra,* pp. 62–76, that a defendant cannot challenge an indictment because of the bias of grand jurors

unless he can show specific and convincing evidence of strong bias in individual grand jurors. Here, as in *Shelton*, petitioner made no allegations with respect to individual grand jurors and did not even state any specific facts of bias among government employees generally.

V

Petitioner contends that the indictment was required to specify the subjects under inquiry and to allege that his refusal to answer was wilful. We point out in our brief in *Shelton, supra*, pp. 78–83, that under Rule 7(c) of the Federal Rules of Criminal Procedure and the decisions of this Court and the courts of appeals, an indictment need not specify the subject under inquiry. And we have shown in our brief in *Liveright, supra*, pp. 50–51, that an indictment need not allege that the witness' refusal to answer the questions was wilful if, as here, the indictment alleges that the witness has "unlawfully" refused to answer.

ARGUMENT*

I

THE COMMITTEE WAS ACTING PURSUANT TO A VALID LEGISLATIVE PURPOSE

Petitioner contends that the courts below erred in holding that the Committee was acting pursuant to a

* For the convenience of the Court we have included, as an appendix to this brief (the last of our briefs in this set of six contempt-of-Congress cases), a chart showing the principal contentions made by the petitioners and the government. The chart also shows the government brief in which the main argument appears as to each point common to more than one case. See *infra*, p. 45.

valid legislative purpose. More specifically, he argues that the purpose of the Committee, generally, is exposure (Pet. Br. 28–34); that the particular purpose of the Committee in calling him was exposure (Pet. Br. 34–47); that the purpose of the hearings was to attaint petitioner (Pet. Br. 47–49); and that the trial court erroneously excluded evidence showing the invalid legislative purpose of the Committee (Pet. Br. 53–56). These contentions are all without merit.

A. THE COMMITTEE'S INVESTIGATIONS OF COMMUNIST ACTIVITIES HAVE BEEN FOR A VALID LEGISLATIVE PURPOSE

It is established that the House Un-American Activities Committee, in conducting extensive investigations into Communist activities in this country, has been acting pursuant to a valid legislative purpose. This Court held in *Barenblatt* v. *United States*, 360 U.S. 109, 120–121—which was decided after the hearings involved in this case—that "it can hardly be seriously argued that the investigation of Communist activities generally, and the attendant use of compulsory process, was beyond the purview of the [House Un-American Activities] Committee's intended authority under Rule XI." The Court upheld the power of Congress to conduct such investigations of Communist activities on the ground that the investigations have a valid legislative purpose (*id.* at 127–128):

> That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned

> by this Court, and it is sufficient to say, without particularization, that Congress has enacted or considered in this field a wide range of legislative measures, not a few of which have stemmed from recommendations of the very Committee whose actions have been drawn in question here. In the last analysis this power rests on the right of self-preservation * * *.

This holding was reiterated in *Wilkinson* v. *United States*, 365 U.S. 399, 409–411, and again in *Braden* v. *United States*, 365 U.S. 431, 433–435.

Petitioner, however, claims (Pet. Br. 28–34), relying on statements of the Chairman of the Committee and its employees and what he alleges are the Committee's methods of operation, that the Committee investigations are conducted for the purpose of exposure, not legislation. The identical argument, based on the same or similar evidence,[10] was also made in *Watkins* v. *United States*, 354 U.S. 178. In rejecting this argument, the Court stated (*id.* at 199–200):

> Petitioner has earnestly suggested that the difficult questions of protecting these rights [rights guaranteed by the Bill of Rights] from infringement by legislative inquiries can be surmounted in this case because there was no public purpose served in his interrogation. His conclusion is based upon the thesis that the Subcommittee was engaged in a program of exposure for the sake of exposure. The sole purpose of the inquiry, he contends, was to bring down upon himself and others the vio-

[10] Compare the record (pp. 160–214) and petitioner's brief (Pet. Br. 28–34) in this case with the record (pp. 11–16, 58–64, 93–168) and the petitioner's brief (pp. 12–34) in *Watkins*, No. 261, Oct. Term, 1956.

> lence of public reaction because of their past beliefs, expressions and associations. In support of this argument, petitioner has marshalled an impressive array of evidence that some Congressmen have believed that such was their duty, or part of it.
>
> We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominate result can only be an invasion of the private rights of individuals. But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purposes is being served.

The contention rejected in *Watkins* was renewed in *Barenblatt*—that the "true objective of the Committee and of the Congress was purely 'exposure' " (360 U.S. at 132)—on the basis of virtually the same evidence. See *id.* at 153–159 (Mr. Justice Black dissenting).[11] This Court, however, again held that (*id.* at 132–133):

> So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power. * * * It is, of course, true, as was said in *McCray* v. *United States*, 195 U.S. 27, 55, "that if there

[11] See also the record (pp. [illegible]2) and the petitioner's brief (pp. 51–52) in *Barenblatt*, No. 35, Oct. Term, 1958.

> be no authority in the judiciary to restrain a lawful exercise of power by another department of the government, where a wrong motive or purpose has impelled to the exertion of the power, that abuses of a power conferred may be temporarily effectual. The remedy for this, however, lies, not in the abuse by the judicial authority of its functions, but in the people, upon whom, after all, under our institutions, reliance must be placed for the correction of abuses committed in the exercise of a lawful power." These principles of course apply as well to committee investigations into the need for legislation as to the enactments which such investigations may produce. Cf. *Tenney* v. *Brandhove*, 341 U.S. 367, 377–378.

Similarly, in *Wilkinson*, this Court held that "it is not for us to speculate as to the motivations that may have prompted the decision of individual members of the subcommittee to summon the petitioner." 365 U.S. at 412.

B. THE RECORD SHOWS THAT THIS PARTICULAR INVESTIGATION HAD A VALID LEGISLATIVE PURPOSE

After the government had introduced evidence at petitioner's trial showing the Committee's sustained legislative purpose (R. 7), the district court found "that the committee was engaged in a valid legislative purpose" (R. 36). The court of appeals stated that "[t]he record clearly demonstrates that the Committee hearing was one constituting a continued investigation which the Committee was conducting into Communist activities in the labor field, including infiltration into labor organizations and Communist

propaganda" (R. 219). Upon a thorough review of the record (R. 219–229), the court concluded (R. 229):

> Exposure no doubt resulted from the inquiry. But no one can fairly read the record without perceiving that the dominant purpose of the Committee was a legislative one, namely, to learn the extent of Communist infiltration or domination of labor unions.

We submit that the court of appeals' holding is fully supported by the evidence.

At the time of the issuance of the subpoena the Committee had reason to believe that petitioner would have information concerning Communist activities in the labor field. The Committee had information that petitioner was a general vice-president of the United Electrical, Radio, and Machine Workers of America, and president of District No. 9 of the union. The Committee had received sworn testimony in 1951 from a long-time district president of U.E. that almost all the important officials of the union were Communist Party members. In July 1953, a former Communist who had been an organizer for the U.E., testified that all of the organizers for the U.E. who attended meetings were members of the Communist Party (see supra, p. 3). It is clear that when petitioner was subpoenaed the Committee reasonably believed that he would have information concerning Communist activities in labor unions, which was a subject of the Committee's legislative interest.

The record shows that on February 9, 1955, when the Committee announced that hearings would be

held at Fort Wayne, Indiana,[12] neither the Chairman of the Committee, nor the Committee counsel, nor the members of the subcommittee had any knowledge that an N.L.R.B. election was pending at the Magnavox plant in Fort Wayne and had been set for February 24, 1955 (R. 76–77, 91, 155). However, on February 10, 1955, Mr. Walter received from petitioner a highly abusive telegram (R. 86–88). In his telegram, petitioner stated that, in view of the scheduled N.L.R.B. election at the Magnavox plant on February 24, and in view of the criminal conviction of former Committee Chairman Thomas for "bribery," he had every right to ask whether the Committee had been bribed by management to help it in "union busting." On February 14, 1955, George Goldstein, Washington representative of the U.E., sought a continuance of the hearing until after the union election at Magnavox. Because of the nature of the telegram sent by petitioner on the 10th, Chairman Walter determined to hear Mr. Goldstein only at a reported session (R. 79).

Petitioner suggests (Pet. Br. 8–9) that the colloquy which developed during the interview is evidence that the Committee was not furthering a legislative purpose. The material portions of the interview are as follows (R. 77):

> Chairman Walter. Not until we received an insulting telegram. After I received that telegram, then I became aware of the fact that there was an election being held. We had previously absolutely no knowledge of it, and

[12] The Committee counsel testified that no newspaper release was prepared by the Committee (R. 155).

> the only reason we decided on this hearing there was because these people are there. If they are well enough to be in Fort Wayne, Indiana, working, they are well enough to testify. That is our attitude.
>
> * * * * *
>
> Chairman Walter. I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Commenting on this colloquy, the court below stated (R. 225):

> [I]t can be gleaned that Mr. Walter showed some displeasure which, under the circumstances, and having in mind the abusive and insulting telegram * * * can be understood and as readily be excused. Congressmen are more fortunate than judges in at least this respect, that when attacked unjustly, they are at liberty to defend themselves and to express themselves forcefully and vigorously.[13]

[13] Petitioner points (Pet. Br. 8–9, 36) to testimony of a newspaper reporter who wrote a story to the effect that at the meeting of February 14, 1955, the "House Un-American Activities Committee members frankly declared today they are out to break the alleged Communist-led Independent United Electrical Workers Union (R. 199)." The reporter admitted, however, the accuracy of the stenographically reported conference between Mr. Walter and Mr. Goldstein on February 14, although he "thought" something more was said by Mr. Walter or another representative of the Committee (R. 79–80).

While a continuance of the scheduled hearing was at first denied (R. 23), it was later granted and the hearing was set for February 28 (R. 23–24). On that date the hearings opened with an announcement from the Chairman of the subcommittee that the subject of the inquiry was "Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda." (see *supra*, p. 6). The questions asked petitioner showed clearly that the Committee was continuing its investigation of Communist infiltration in the labor field. No member of the Committee nor its counsel indicated that the Committee was engaged in "union busting" or was attempting merely to expose petitioner. Instead, while petitioner claimed that the Committee was engaged in union busting and in attempting to try him for a criminal offense, the subcommittee members and counsel repeatedly stated that the subcommittee was seeking information on Communist activities. And more specifically, Congressman Doyle four times stated that the purpose of the hearings was to obtain information on Communist infiltration and control of labor unions (see *supra*, pp. 7, 10, 12, 13).

In response to this clear proof during the hearing itself that the Committee was pursuing a valid legislative purpose, petitioner relies almost entirely on newspaper stories (Pet. Br. 35–36). We submit that such evidence constitutes merely an attempt to look into the motives of the Committee members, which, as we have seen (pp. 19–22), petitioner is not per-

mitted to do. In *Watkins* and *Barenblatt* this Court held that a defendant is not entitled to challenge the motives of committee members on the basis of their official statements on the floor of Congress, at committee hearings, and in committee reports; *a fortiori,* he cannot do so on the basis of unofficial statements made to the press. Moreover, even if petitioner could look into the motives of the Committee, the newspaper stories are at most only unpersuasive bits-and-pieces that cannot outweigh the proof in the transcript of the hearing itself.

It is of course true that "exposure" of petitioner, as well as other persons, resulted to some extent from the hearings. But this is an inevitable result of any Congressional investigation into secret or unpublicized activities, whether they are criminal or not. Thus, petitioner's argument is in effect that any exposure resulting from an inquiry is exposure "for the sake of exposure," and that, since exposure results from an inquiry, the inquiry must therefore be for a non-legislative purpose. On the contrary, exposure of problem areas is one of the preliminary steps to remedial legislation, and personnel is often a vital part of the problem (see our brief in *Whitman* v. *United States,* No. 10, this Term, pp. 35, 49–50). It was of obvious importance to this investigation of Communist activities in labor unions, and particularly the U.E., to determine what officers of the union were Party members. Such information would show the extent to which the unions were Communist-controlled and therefore the need, or lack of any need, for legislation. In short, it is only exposure unrelated to the

furtherance of a legislative purpose which is prohibited. *Watkins* v. *United States, supra,* 354 U.S. at 200; *Barenblatt* v. *United States, supra,* 360 U.S. at 132.

C. THE HEARING DID NOT CONSTITUTE A BILL OF ATTAINDER

Petitioner claims (Pet. Br. 47–49) that, since the hearing was intended to expose him, it was also a bill of attainder. He reasons that such a proceeding results in "a judgment handed down without judicial trial that the witness is guilty of subversion." This contention is clearly erroneous.

A bill of attainder is a legislative act which inflicts punishment without a judicial trial. *E.g., Cummings* v. *Missouri,* 4 Wall. 277, 323; *United States* v. *Lovett,* 328 U.S. 303, 315–317. The punishment inflicted, however, need not be punishment in the usual sense of fine or imprisonment. It may consist of deprivation of the privilege of pursuing a certain profession (*Ex parte Garland,* 4 Wall. 333, 377), or, in some circumstances, of working for the government (*United States* v. *Lovett, supra,* 328 U.S. at 316), or, in general, of "any rights, civil or political, previously enjoyed," depending upon "the circumstances attending and the causes of the deprivation." *Cummings* v. *Missouri, supra,* 4 Wall. at 320; *Garner* v. *Los Angeles Board,* 341 U.S. 716, 722. We know of no case, however, in which the public presentation of the facts concerning an individual—or "exposure" as petitioner terms it—has been held to be a bill of attainder. The publication of facts

concerning petitioner's activities did not deprive him of any recognized civil or political right.

In any event, even if petitioner were correct that his "exposure" deprived him of a recognized right, it is settled that not all disabilities constitute punishment within the meaning of the bill-of-attainder clause. This Court has recently held that whether a statute is a bill of attainder depends upon the purpose of the statute. In *Flemming* v. *Nestor*, 363 U.S. 603, 613–614, the Court stated that:

> In determining whether legislation which bases a disqualification on the happening of a certain past event imposes a punishment, the Court has sought to discern the objects on which the enactment in question was focused. Where the source of legislative concern can be thought to be the activity or status from which the individual is barred, the disqualification is not punishment even though it may bear harshly upon one affected. The contrary is the case where the statute in question is evidently aimed at the person or class of persons disqualified.

Similarly, the plurality opinion of the Chief Justice in *Trop* v. *Dulles*, 356 U.S. 86, 96, stated:

> If the statute imposes a disability for the purposes of punishment—that is, to reprimand the wrongdoer, to deter others, etc.—it has been considered penal. But a statute has been considered nonpenal if it imposes a disability, not to punish, but to accomplish some other legitimate governmental purpose. The Court has recognized that any statute decreeing some adversity as a consequence of certain conduct

> may have both a penal and a nonpenal effect. The controlling nature of such statutes normally depends on the evident purpose of the legislature.

See also the opinion of Mr. Justice Frankfurter in *De Veau* v. *Braisted*, 363 U.S. 144, 160.

Apparently recognizing that he must show that the disability he claims to have suffered was the purpose of the hearing, petitioner rests his contention that the hearing was a bill of attainder on his allegation that the Committee's purpose was exposure (Pet. Br. 47). Thus, petitioner in effect admits—as the decisions of this Court discussed above require him to do—that the mere fact that exposure may have resulted from the hearing cannot make the hearing a bill of attainder. But, as we have shown above (pp. 22–28), the record clearly shows that the hearing was intended to secure information concerning Communist activities in labor unions, not to expose petitioner.

D. THE TRIAL COURT PROPERLY EXCLUDED THE NEWSPAPER STORIES WHICH PETITIONER OFFERED TO PROVE THAT THE COMMITTEE HAD AN INVALID PURPOSE

Petitioner contends (Pet. Br. 53–56) that the trial court erred in excluding newspaper stories allegedly tending to show that the hearing was called for the purpose of exposure. Similar evidence (in some instances the identical evidence)—relating to the purposes of the Committee in general—was offered in *Watkins* v. *United States, supra,* and rejected by the trial court.[14] In upholding the court's decision the court of appeals stated (233 F. 2d 681, 687):

[14] See the record in *Watkins*, No. 261, Oct. Term, 1956, pp. 92–134, 164–174.

> Appellant would have us judge the present controversy upon the basis of speeches made by members of Congress and others, and upon newspaper articles, etc. We cannot do so. Such material is not evidence. The question is an individual one, whether the inquiry is indeed pertinent to a valid legislative purpose. It cannot be solved by generalities culled from speeches—many of them no doubt partially extemporaneous—or from partisan assailants, critics, friends or defenders of some project or cause. Moreover, even if the unbridled power of exposure were claimed by some members of Congress, the claim would not establish its use in any particular inquiry. We must judge each inquiry in its own setting and upon its own facts.

As we have shown above, this Court held in *Watkins* that it was not the function of the Court to test the motives of Congressmen: "Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served" (354 U.S. at 200) (see *supra*, pp. 19–22). Similarly, extemporaneous statements to the press by members of the Committee could not prove in this case that the investigation was being conducted for an invalid purpose when the inquiry into Communist infiltration into the field of labor clearly served a legislative purpose of Congress.[15]

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[15] Petitioner also objects (~~Pet. Br. 56~~) to the trial court's refusal (~~R. 160~~) to allow him to introduce evidence showing that the labor relations director of the Magnavox plant knew that petitioner was going to be subpoenaed three days before he was actually subpoenaed and that he announced this fact to employees at the plant. If these allegations are true, they can-

II

THE COMMITTEE'S INVESTIGATION DID NOT VIOLATE THE FIRST AMENDMENT

Petitioner claims (Pet. Br. 50–53) that the Committee's investigation violated his rights under the First Amendment. As he himself suggests (Pet. Br. 52), however, this issue is controlled by *Barenblatt* v. *United States, supra*, 360 U.S. at 125–134. This Court there upheld the constitutionality of a Congressional investigation of Communist activities in education. It necessarily follows that this investigation of Communist activities in labor unions (see *infra*, pp. 36–38) was likewise valid under the First Amendment.

Petitioner contends that the Committee did not have probable cause to subpoena him. As we have shown in our brief in *Shelton* v. *United States*, No. 9, this Term, pp. 50–55, the rule laid down by this Court is that a Congressional committee can properly subpoena a witness when it has reasonable basis for believing that the witness has information related to the subject under investigation which would be of value to the committee. *Barenblatt* v. *United States, supra*, 360 U.S. at 134; *Wilkinson* v. *United States, supra*, 365 U.S. at 412. We submit that the Committee clearly had such a reasonable basis for subpoenaing petitioner.

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not possibly prove that the investigation served no legislative purpose. The most this evidence would tend to show is that some members or employees of the Committee had an improper motive. But even this inference is extremely weak since petitioner does not claim how or from whom the Magnavox official received the information. Certainly that official's use of the information cannot be attributed to the Committee.

At the time petitioner was subpoenaed, the Committee had information that the United Electrical Radio and Machine Workers of America had been infiltrated by the Communist Party. Indeed, the Committee had heard sworn testimony that virtually all the union's officers were Communists (see *supra*, p. 3). Petitioner was admittedly general vice-president of that union and president of District No. 9. The Committee had further information linking petitioner with Russell Nixon, a lobbyist for the union who had been identified by a witness as a member of the Communist Party, and with the American Peace Crusade, which the Committee believed to be a Communist-front organization (see *supra*, pp. 10–11, 13). In the light of this information, it cannot be seriously contended that the Committee lacked reason to believe that petitioner had information which would aid in its investigation of Communist activities in the labor field.

III

PETITIONER, HAVING FAILED TO CHALLENGE THE PERTINENCY OF THE QUESTIONS BEFORE THE COMMITTEE, CANNOT CLAIM FOR THE FIRST TIME AT HIS TRIAL THAT HE WAS NOT APPRISED OF THEIR PERTINENCY. IN ANY EVENT, PETITIONER WAS APPRISED OF THEIR PERTINENCY

A. THE ISSUE OF PERTINENCY WAS NOT PROPERLY RAISED BEFORE THE COMMITTEE

Petitioner claims (Pet. Br. 57–58) that he was not adequately apprised by the subcommittee of the subject under inquiry so that he could determine whether the questions asked him were pertinent to this subject. But petitioner failed to raise this objection before the

subcommittee and, under this Court's decisions, he is precluded from raising it for the first time in the contempt proceeding.

1. As we have shown in our brief in *Shelton* v. *United States*, *supra*, pp. 25–32, a witness before a Congressional committee cannot claim that the committee has failed to apprise him of the subject under inquiry and the pertinency of the questions to this subject, unless he raises the issue of pertinency before the committee itself. *Barenblatt* v. *United States*, *supra*, 360 U.S. at 123–124; *Deutch* v. *United States*, 367 U.S. 456, 469. He cannot wait until trial to raise an objection which the committee could easily remedy.

2. Petitioner, who appeared before the subcommittee with counsel, did not make even the "contemplated" and "buried" objection to the pertinency of the questions which was made by the witness in *Barenblatt* nor did he indicate any doubt as to the importance of the questions such as was stated by the witness in *Deutch*. Petitioner's preliminary statement was no more than a general challenge to the power of the subcommittee to hold any hearings or to ask any questions of the witnesses before it. The statement claimed that the Committee had no valid legislative purpose, that the hearing violated the bill-of-attainder clause of the Constitution and the First Amendment, and that the Committee's authorizing resolution did not authorize the hearing and was unconstitutionally vague. (see *supra*, pp. 6–7). This did not, and could not, constitute an objection to the pertinency of questions not yet asked. A similar statement attacking the jurisdiction and power of the

committee was made by the witness in *Barenblatt*, but the Court concluded that this "general challenge to the power of the Subcommittee" was not adequate "to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection" to apprise the witness of the pertinency of the questions. 360 U.S. at 124.[14] While in *Barenblatt* the memorandum contained "contemplated" and "buried" objections on the ground of pertinency (although this Court did not consider them sufficiently clear), here petitioner's statement did not make even those "contemplated" and "buried" objections.

Petitioner likewise did not question the pertinency of any of the particular questions asked him during the course of the hearing. Instead, he repeated the objections in his statement: that the hearing was not within the power given the Committee by its authorizing resolution; that the hearing was intended to "bust" the union, or to expose petitioner, or to try and convict him, and therefore did not have a valid legislative purpose; and that the hearing as a whole and particular questions violated the First Amendment. In addition, he claimed that the Committee relied on informers who were liars (see *supra*, pp. 7–13). Obviously, none of these objections even suggested to the subcommittee that petitioner was claiming that he did not understand the pertinency of the questions.

[14] Compare the legal memorandum filed by the petitioner in *Barenblatt* (see the record in No. 35, Oct. Term, 1958, pp. 227–235) with the memorandum in this case (R. 201–202).

B. PETITIONER WAS APPRISED OF THE PERTINENCY OF THE QUESTIONS

In any event, even if petitioner had properly objected to the pertinency of the questions, it is clear that he was apprised of their pertinency.

1. Petitioner was apprised, from at least three different sources, that the subject under inquiry at the hearings was Communist activity in labor unions. Thus, at the start of the hearings on February 28, the day petitioner first testified, the chairman of the subcommittee specifically stated (R. 60–61):

> There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda.

This statement was made immediately before Julia Jacobs was called as the first witness. Petitioner, at the beginning of his testimony, indicated that he had heard Miss Jacobs' testimony (Gov. Ex. 8, p. 72) and subsequently reaffirmed this fact (*id.* at p. 93). Moreover, counsel representing petitioner had also represented Julia Jacobs and was certainly present when the opening statement was made.[17]

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[17] Petitioner contends (Pet. Br. 57) that the presence of his counsel when the opening statement was made is not sufficient. As we have shown, however, there is every indication that petitioner was present when the statement was made. In addition, it would certainly seem that petitioner could be charged with the knowledge of his counsel when counsel appeared for each of three witnesses (Miss Jacobs, Henry Aron, and petitioner) who appeared on the opening day of the hearings and the three, through counsel, filed a joint statement objecting to the Committee's authority (see *supra*, pp. 6–7).

Second, as we have just noted, petitioner admitted knowledge of the testimony of Julia Jacobs. The questions asked by the Committee of Miss Jacobs—concerning the witness' employment and work in the labor movement and her possible Communist Party membership—clearly showed that the subject of the Committee's inquiry was Communist activity in labor unions (Gov. Ex. 8, pp. 20–56). Miss Jacobs was questioned as to many of the same activities about which petitioner was questioned, including the Square D strike (*id.* at p. 31), the pilgrimage to Washington organized by the American Peace Crusade (*id.* at p. 38), and petitioner's passport problems (*id.* at p. 39). Moreover, Congressman Doyle explicitly restated the purpose of the hearings during Miss Jacobs' testimony (*id.* at pp. 43–44):

> [M]y questions are directed to you because we are interested in finding out the extent and through what persons, and how, the Communist Party in your experience has undertaken to influence labor unions wherever you know anything about them.
>
> * * * * *
>
> May I make this further statement: I am not interested in asking any question or getting you to answer any question that deliberately or otherwise is intended to hurt any organization which is patriotic and law-abiding. That is whether it is a labor union, or whatever it is. But I am interested, as I stated before, in getting your cooperation if you will give it to us on helping to uncover any person or any group of persons who are undertaking to subvert the labor union of which you are secretary or any

> other group to their own Communist Party objectives.
>
> The purpose of this committee sitting here under Public Law 601 is to get that information, if we can, from you and others, looking toward amendments to or strengthening legislation dealing with subversive activities.

Third, during petitioner's appearance before the subcommittee, he was twice told by Congressman Doyle the precise question under inquiry. Before petitioner was asked the question involved in count seven, Congressman Doyle told him that the subcommittee was "trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president" (see *supra*, p. 10). Subsequently, at the time petitioner was directed to answer the question involved in count eight, Congressman Doyle stated (see *supra*, p. 12):

> * * * I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * * the extent to which they were using it then and are using it now for their conspiratorial purposes.

See also the statements of Congressman Doyle at the start of petitioner's testimony and after petitioner had refused to answer all the questions involved in the indictment (see *supra*, pp. 7, 13).

2. All six of the questions on which petitioner was convicted were, either on their face or as shown by the statements made to petitioner at the time, pertinent to the subject of Communist activity in labor unions. However, since petitioner was given a general sentence and a fine on all six counts which was less than the maximum authorized by 2 U.S.C. 192 under any one count, the judgment below must be affirmed if his conviction on any one of the counts was valid. *E.g.*, *Barenblatt* v. *United States*, *supra*, 360 U.S. at 115.

The question involved in count three—whether petitioner was a the time of the hearings a member of the Communist Party—was on its face pertinent to the subject under inquiry. This Court in *Barenblatt* stated that the pertinency of an identical question (see 360 U.S. at 114) "was clear beyond doubt" (*id.* at 125) to the subject of Communist activity in education. It is equally pertinent to the subject of Communist activities in the labor field.

Petitioner was also apprised of the pertinency of the question involved in count four—"[y]ou have left us under the impression at this point by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson" (see *supra*, p. 9). This question, when asked of an important labor official residing in Indiana, is clearly pertinent to an investigation of Communist activities in labor unions. Similarly, petitioner was apprised of the pertinency of at least half of the information sought by the question involved in count six—whether Elmer Johnson or Henry Aron ever

addressed a group of people while petitioner was present.

Before petitioner was asked the question involved in count seven—whether he knew Russell Nixon to be a Party member—petitioner had been told by Congressman Doyle that the subcommittee was investigating Communist control of the U.E. Petitioner had admitted that he was acquainted with Mr. Nixon and that he knew that Nixon was legislative representative of the U.E. in Washington (see *supra*, pp. 10–11). This question concerning the Communist Party membership of a high union official was just as pertinent to the subject of Communist activities in labor unions as the question concerning whether petitioner himself was a Party member.

The subcommittee also explained to petitioner the question involved in count eight—whether he had "an active part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the American Peace Crusade" (see *supra*, pp. 11–12). The Committee counsel told petitioner that the question was directed to discovering "the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power." And Congressman Doyle stated that he wished to discover (see *supra*, p. 12):

> • • • [W]hat the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union

> that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

In addition, before petitioner was asked the question involved in count nine—who had solicited him as a sponsor of the American Peace Crusade—he was shown an article of the Daily Worker listing a "John Gojack, international vice-president, UERWMA" as initial sponsor of that organization (see *supra*, p. 13).[18]

IV

PETITIONER WAS NOT ENTITLED TO DISMISSAL OF THE INDICTMENT OR A HEARING ON THE BASIS OF BROAD ALLEGATIONS THAT GOVERNMENT EMPLOYEES GENERALLY ARE BIASED

Petitioner contends ~~(Pet. Br. 66)~~ that the indictment should have been dismissed since the grand jury included government employees who were biased against him because of the government's loyalty and

[18] Petitioner does not raise the distinct issue whether the government proved at his trial that "the questions propounded by the congressional committee were in fact 'pertinent to the question under inquiry' by the committee." *Deutch* v. *United States*, 367 U.S. 456, 468. And since this issue was not presented in the petition for certiorari, it is not before the Court. In any event, the evidence which we have relied upon to show that petitioner was apprised of the pertinency of the questions when he appeared before the subcommittee likewise demonstrates that the questions were in fact pertinent to the subject under inquiry. Moreover, the record at the trial included additional evidence showing that the questions were pertinent to the subject under inquiry (see *supra*, 3, 9 at note 5, 10 at note 6, 11 at note 7).

security programs. Alternatively, petitioner claims that he was entitled to a hearing in the district court to allow him to prove bias. We have shown, however, in our brief in *Shelton* v. *United States, supra,* pp. 62–64, that a defendant is not entitled to dismissal of an indictment merely because government employees were on the grand jury. We have also shown in *Shelton,* pp. 64–76, that the defendant is not entitled to a hearing to inquire into the motives and beliefs of grand jurors—even if we assume contrary to the holding of numerous cases that the defendant is sometimes entitled to such a hearing—*only* when he alleges specific and convincing facts of strong bias in individual grand jurors. Here, like in *Shelton* (see our brief in *Shelton,* pp. 77–78), *Liveright* v. *United States,* No. 11, this Term, and *Price* v. *United States,* No. 12, this Term, petitioner's affidavit (R. 5–12), accompanying his Motion to Dismiss the Indictment and for Other Appropriate Relief (R. 4–5), did not state any facts underlying his contention of fear and intimidation among government employees generally resulting from the security program which petitioner would show if a hearing were granted. Similarly, as in *Shelton, Liveright,* and *Price,* petitioner did not allege bias or fear with respect to any individual grand jurors (see our brief in *Shelton,* pp. 76–77). In these circumstances, the trial court properly refused to grant petitioner a hearing to conduct a general exploration of the motives and beliefs of the grand jurors.[19]

[19] While petitioner relies on the contentions made by the petitioner in *Russell* v. *United States,* No. 8, this Term, in that case the petitioner did state some facts which, if proved, would

V

THE INDICTMENT WAS NOT REQUIRED TO SPECIFY THE SUBJECT UNDER INQUIRY OR TO ALLEGE THAT PETITIONER'S REFUSAL TO ANSWER WAS WILFUL

The indictment upon which petitioner was convicted alleged that the questions petitioner refused to answer "were pertinent to the question then under inquiry" and that "the defendant unlawfully refused to answer those pertinent questions" (R. 1). Petitioner claims (Pet. Br. 59–65) that the indictment was invalid because it failed to specify the subject under inquiry when petitioner testified or to allege that his refusal to answer was wilful.

As we have shown in our brief in *Shelton* v. *United States, supra,* pp. 78–83, petitioner's contention that the indictment was required to state the specific subject under inquiry is inconsistent with Rule 7(c) of the Federal Rules of Criminal Procedure and with decisions both of this Court and the courts of appeals. As to petitioner's contention that the indictment was required to state that his refusal to answer was wilful, we have shown in our brief in *Liveright* v. *United States, supra,* pp. 50–51, that it is sufficient if, as here, the indictment alleges that the witness has "unlawfully" refused to answer.

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tend to show that government employees would be biased in cases involving Communism. In *Russell*, however, as in this case, the petitioner was not entitled to a hearing because he did not allege any facts as to the bias of any individual grand jurors. See our brief in *Russell*, pp. 37–38.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court of appeals should be affirmed.

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DECEMBER 1961.

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APPENDIX[1]

	Shelton, No. 9		*Russell*, No. 8	
	Senate		House	
	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.
I. Authority of the Committee				
1. Enabling resolution is vague	Not raised	Not raised	Not raised	Not raised
2. Subcommittee was not authorized by parent committee	Not raised	Not raised	Not raised	Not raised
3. Committee did not authorize hearing	Not raised	Not raised	57	22–23
4. Subcommittee was not a competent committee	Not raised	Not raised	Not raised	Not raised
5. Subcommittee did not apprise witness of its authority	Not raised	Not raised	Not raised	Not raised
II. Pertinency				
1. Government failed to prove pertinency at trial	58–63	22–24	64–66	32–36
2. Witness failed to object to pertinency before committee	58–63	25–32*	Not raised	Not raised
3. Committee failed to apprise witness of pertinency	58–63	32–41	Not raised	Not raised
III. Constitutional Question				
1. Inquiry violated the witness' First Amendment rights	53–57	48–62*	Not raised	Not raised
2. Committee was not acting pursuant to a valid legislative purpose	Not raised	Not raised	54–55	26–31
3. Committee was acting without probable cause	29–57	41–48,* 50–62*	Not raised	Not raised
IV. Indictment				
1. Indictment was invalid because grand jurors were government employees	64	62–64*	23–41	37–38
2. Defendant was denied a hearing to examine the grand jurors for bias	64	64–78*	40–41	37–38
3. Indictment failed to allege subject under inquiry	63–64	78–83*	41–50	38–39
4. Indictment failed to allege pertinency of questions	Not raised	Not raised	50	38–39
5. Indictment failed to allege authority of subcommittee	Not raised	Not raised	Not raised	Not raised
6. Indictment failed to allege *wilful* refusal to answer	Not raised	Not raised	Not raised	Not raised
7. Witness was indicted and convicted on separate counts for each refusal to answer	Not raised	Not raised	60–64	15–20
V. Trial Procedure				
1. Trial court denied right of cross-examination	Not raised	Not raised	Not raised	Not raised
2. Trial court denied motion to subpoena committee's files	29	59–60	Not raised	Not raised

[1] The government's main arguments, where the issue arises in more than one case, are indicated in this chart by asterisks.

APPENDIX [1]

Shelton, No. 9		*Russell*, No. 8		*Whitman*, No. 10		*Liveright*, No. 11		*Price*, No. 12		*Gojack*, No. 128	
Senate		House		Senate		Senate		Senate		House	
Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.
Not raised	Not raised	Not raised	Not raised	47–48	21	34	19–28	34–36	19–22	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	46–47	21–23	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised
Not raised	Not raised	57	22–23	48–50	23–25	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	35–42	28–33*	43–44	22–23	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	50–52	50–51	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised
58–63	22–24	64–66	32–36	20–42	43–50	16–28, 47–48	44–48	22–27	26–31	Not raised	Not raised
58–63	25–32*	Not raised	Not raised	42–46	38–40	28–31	36–37	28–29	24–26	57–58	33–35
58–63	32–41	Not raised	Not raised	42–46	40–43	28–31	37–44	28–29	Not argued	57–58	36–41
53–57	48–62*	Not raised	Not raised	52–58	25–37	35	34–35	37–43	23	42–50	32–33
Not raised	Not raised	51–55	26–31	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	23–49, 53–56	18–31
29–57	41–48,* 50–62*	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	20–22	38–41	Not raised	Not raised
64	62–64*	23–41	37–38	Not raised	Not raised	42–47	48–49	44–45	31–32	66	41–42
64	64–78*	40–41	37–38	Not raised	Not raised	46	48–49	44–45	31–32	66	41–42
63–64	78–83*	41–50	38–39	60–63	52–53	16	50	16–18	32–33	59–65	43
Not raised	Not raised	50	38–39	63	53	16	50	18	32–33	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	63–64	53	16	Not raised	18–19	33–34	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	16	50–51*	20	33	65	43
Not raised	Not raised	60–64	15–20	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	31–34	55–57	30–34	34–38	Not raised	Not raised
29	59–60	Not raised	Not raised	Not raised	Not raised	31–34	51–55	30–34	34–38	Not raised	Not raised

[1] ated in this chart by asterisks.

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JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 128

JOHN T. GOJACK,

Petitioner,

vs.

UNITED STATES OF AMERICA.

REPLY BRIEF FOR PETITIONER

This brief is submitted pursuant to leave of the Court.

1. In enacting the 1857 statute (11 Stat. 155), Congress sought primarily to provide for punishment which would survive the end of a legislative session. It did not seek to extend in other ways—if, indeed, under the Constitution it could have done so—the scope of its power to compel testimony. Punishment for contempt continued to be restricted to witnesses who obstructed legitimate legislative aims.

In the debate preceding the passage of the 1857 statute, Senator Seward objected to the broad language of the bill, saying:

> "* * * it may be a subject over which Congress has no jurisdiction. It may be foreign from all the provisions of the Constitution; it may be a local question; it may be a State question; it may be a personal question; it is not necessarily a public question."

In response, Senator Bayard countered:

> "I am aware that legislative bodies have transcended their powers—that under the influence of passion and political excitement they have very often invaded the rights of individuals, and may have invaded the rights of coordinate branches of the Government, but if our institutions are to last, there can be no greater safeguard than will result from transferring that which now stands on an indefinite power (the punishment as well as the offense resting in the breast of either House) from Congress to the courts of justice. When a case of this kind comes before a court, will not the first inquiry be, have Congress jurisdiction of the subject-matter?—has the House which undertakes to inquire, jurisdiction of the subject? If they have not, the whole proceedings are *coram non judice* and void, and the party cannot be held liable under indictment. The court would quash the indictment if this fact appeared on its face; and if it appeared on the trial they would direct the jury to acquit." Cong. Globe, 34 Cong., 3d Sess. (1857) 439-440.

In the first major court test of Congressional investigating power, the Court, in *Kilbourn* v. *Thompson*, 103 U.S. 168, adopted Senator Bayard's view that the investigating function and contempt powers of Congress are to be subjected to intensive judicial scrutiny.

2. The Government presses upon the Court the ruling in the *Barenblatt* case (360 U.S. at 132) that:

> "So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power."

But this ruling must be applied to the facts of this case. Here, the precise issue is whether Congress acted in pursuance of its constitutional power. The Court certainly did not rule in *Barenblatt* that a colorable claim of legislative purpose could not be refuted or rebutted. On the contrary, it indicated that such a claim could be refuted in a number of ways, including proof that the investigation had assumed law enforcement functions.

3. If, as we contend, either the purpose of breaking the Union or exposing petitioner can be fairly attributable to the Committee, then it seems obvious that the conviction must be reversed. Moreover, even if one purpose of the Committee was legitimate and another improper, that is, non-legislative, the conviction must be reversed. This is so for two separate reasons. In the first place, a legislative tribunal which is inspired in part by an improper purpose is incompetent. It has no power to proceed under Article I, Section 1 of the Constitution. And even if this were not so, the Court would have no way of knowing whether the questions which gave rise to the indictment were asked in pursuance of a proper or improper purpose.

4. The Government places heavy reliance on Congressman Moulder's statement at the commencement of the hearing. But the arguments in the pending cases under Section 192 should serve to convince the Court that a statement of investigative subject matter is a treacherous guide to the purpose of the Committee. Where the subject matter is one upon which Congress may legislate, it creates only a presumption or inference of a legitimate purpose.

5. Obviously, Congressman Moulder's statement cannot bind the Court in the light of the other evidence in the record. We lay particular stress, as we did in our main brief, on the fact that we are dealing with a series of acts

and statements by the *Chairman* of the Committee about this very case. The Chairman is beyond peradventure authoritative where, as here, *no Committee resolution is relied on to controvert it.*

Under the Rules of the Committee (Rule 3), the Chairman is responsible for the issuance of subpoenas. He created the subcommittee (R. 60). Under the Rules of the House, he is regarded as the responsible head of the Committee. See Jefferson's *Manual*, Sections 317, 343, 415, 418, 672. To ignore the course of statements and acts by Chairman Walter in determining whether or not the Committee had a legislative purpose, would mutilate the record. It would, indeed, artificially impose on the investigative process rules of interpretation which are totally alien to it. The entire environment of the investigative process, its historical *milieu*, make it glaringly clear that the Chairman of an investigating committee is *the* authoritative voice in determining its purpose and scope.

6. Contrary to the Government's contention that the newspaper clippings upon which we rely are ineffective to prove purpose, we assert that they are peculiarly probative of exposure. If Congressman Walter had merely issued a press release stating that "we" intend to break the union and to demonstrate that petitioner is a card-carrying Communist upon whom the community is free to take reprisal, such a press release would be a powerful demonstration of the Committee's purpose. Here, the Chairman went beyond issuing a press release; he instigated the actual publication of the same information in a newspaper clipping in the very communities where the injury was to be done. In short, the newspaper clippings are not only evidence of legitimate purpose, but an actual attempt to carry out that purpose. This attempt is, quite apart from the announcement of the Committee's purpose,

independent evidence of the impropriety of the reasons for calling petitioner.

7. The Government argues that the Committee did not know that the Magnavox election was pending. Petitioner sought at the trial to adduce the evidence of Personnel Manager McClaren of the Magnavox Company to show that he knew that petitioner would be called three days before the public announcement that he would be called (Main Brief, p. 56). The obvious purpose of this line of testimony was to demonstrate that the Committee *did* know of the pendency of the election and was in touch with McClaren about the hearing. Under these circumstances, it seems plain to us that the refusal of the trial court to admit this evidence was improper.

8. We have contended that the indictment is insufficient because it fails to specify the matter under inquiry (Main Brief, p. 59). The Court has raised the question in the course of the argument in No. 8 (*Russell* v. *United States*) whether a bill of particulars would not cure this claimed defect. A demand for a bill of particulars was made in the instant case and included the following request: "In what manner was each question set forth in the indictment pertinent to the questions then under inquiry?" This request was denied (R. 13).

9. Petitioner's main brief contains a typographical error which may mislead the Court. Petitioner was sentenced to nine months in prison and a fine of $250, not $2,000, as the brief (at p. 16) erroneously states.

Respectfully submitted,

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